TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible] 52

[illegible] MAS. M. EAGLE, MICHAEL R. KEAN, CLAIMANT AND APPELLANT,

vs.

WILLIAM T. FRASER, OWNER OF THE BRIG "GENERAL WORTH."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED NOVEMBER 29, 1847.

SUPREME COURT OF THE UNITED STATES.

No. 302.

THE TUG "JAS. E. EAGLE," MICHAEL B. KEAN, CLAIMANT AND APPELLANT,

vs.

WILLIAM T. FRASER, OWNER OF THE BRIG "GENERAL WORTH."

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 *District Court attachment.*

DISTRICT COURT OF THE UNITED STATES,
For the eastern district of Michigan, ss:

The President of the United States of America, to the marshall of the eastern district of Michigan, greeting:

Whereas, a libel hath been filed in the said District Court of the United States for the said eastern district of Michigan, on the 17 day of Sept., in the year of our Lord one thousand eight hundred and sixty-four, by William J. Fraser, owner of the brig General Worth, against the steam tug J. E. Eagle and the barge Franklin Moore, claiming that there is due him for damages suffered by a collision between the said brig General Worth and said barge Franklin Moore, near Peach Island Reef, on the morning of the 2d day of September, A. D. 1864, the sum of two thousand six hundred and seventy-five dollars, for the reason and causes in the said libel alleged and mentioned, and praying the usual process and motion of the said court in that behalf to be made, and that all persons interested in the said tug and barge or vessel, her tackle, &c., may be cited in general and special to answer the premises, and that all proceedings being had, that the said tug and barge or vessel, her tackle, &c., may for
2 the causes in the said libel mentioned be condemned and sold to pay the demands of the libelant.

You are therefore, hereby commanded to attach the said tug J. E. Eagle and barge Franklin Moore, or vessel, her boats, tackle, &c., and to detain the same in your custody until the further order of the said court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold, pursuant to the prayer of said libel; that they be and appear before the said court, to be held in and for the said eastern district of Michigan, on the 1st Tuesday of October, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ross Wilkins, judge of the District Court of the United States, for the eastern district of Michigan, at the district court-room, in the city of Detroit, in the said district, this seventeenth day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America, the eighty-ninth.

JNO. WINDER, *Clerk.*

3 EASTERN DISTRICT OF MICHIGAN, *ss:*

By virtue of the within writ, on the seventeenth day of September, A. D. 1864, I seized the within named tug J. E. Eagle, her engine, tackles, and apparel, and also the barge Franklin Moore, her

boats, tackle, apparel, forthwith, and now have them in my custody, to await the further order of the court in the premises.

CHARLES DICKEY, *Marshall.*
By JAMES HENRY, *Deputy.*

2 services	$4 00
2 miles	12
Fees	4 12

4 Endorsed: No. 811. District Court of the United States for the eastern district of Michigan. In admiralty. William T. Fraser, owner of the brig General Worth *vs.* The tug J. E. Eagle and the barge Franklin Moore. Attachment. Returnable 1st Tuesday of October. Returned and filed Sept. 17th, 1864. William D. Wilkins, dep. clerk. Wm. A. Moore, libellants proctor.

5 District Court of the United States for the eastern district of Michigan.—In admiralty.

EASTERN DISTRICT OF MICHIGAN, *ss*:

William J. Fraser, who is a citizen of the United States, and of the State of New York, exhibits this, his libel, against the steam tug J. E. Eagle, her engine and machinery, boats, tackle, apparel and furniture, also the barge Franklin Moore, her boats, tackle, apparel and furniture, in a cause of collision, civil and maratime, and thereupon alleges as follows:

First. That libellant is the owner of the brig General Worth, a vessel of twenty tons burthen and upwards, duly enrolled and licensed at the port of Buffalo, State of New York, and used in navigating the waters of the nortwestern lakes and the rivers connecting said lakes, and engaged in the business of commerce and navigation thereupon.

Second. That said steam tug "J. E. Eagle" and said barge "Franklin Moore," are both vessels of more than twenty tons burthen, enrolled and licensed for the coasting trade and used in navi-
gating the waters of this State and the adjoining States, and
6 now lying or as libellants informed and believes, soon will be at the port of Detroit, in said district, and within the admiralty and maritime jurisdiction of this court.

Third. That on the morning of the first day of September, A. D. 1864, the said brig "General Worth," was on a voyage from the port of Saginaw, in the State of Michigan to the port of Buffalo, in the State of New York, with a cargo of about two hundred thousand feet of lumber, that she had then proceeded on her said voyage as far as to near the upper end of St. Clair river, when the said libellants made and entered into an agreement with the master of the said tug "J. E. Eagle" to have the said brig towed safely and securely from the said upper end of the said St. Clair river to lake Erie, that in accordance with said agreement, said brig, in connection with the schooner "Telegraph" and the said barge "Franklin Moore," (the

said schooner "Telegraph" being the first in the tow, the said brig "General Worth" being the second, and the said barge "Franklin Moore" being the third and last in said tow,) was taken in tow by the said tug. That the said tug proceeded on her voyage to Lake Erie, and had proceeded as far as near the head or upper extremity of the Detroit river where the said tug at about the hour of
7 two o'oclock on the morning of the second day of September aforesaid, with great carelessness, negligence and recklessness, towed the said brig "General Worth" hard onto the reef just above Peach Island, and called "Peach Island Reef." That while the said brig "General Worth" was fast on the reef as aforesaid, the said barge "Franklin Moore" being attached to the said brig "General Worth" by a short line, came on with great force and speed and was carelessly and recklessly made to run into, upon, and to collide with the said brig "General Worth," striking with her stem the rudder post of the said brig, carrying away the transoms, breaking the cabin decks, deck beams, wheel, gearing, rudder, small boat, splitting the covering board, and doing her other great damage. That said brig "General Worth," by having been towed upon the reef as aforesaid, and by having been run into by the said barge as aforesaid, was made to leak, and said libellant by reason of the said grounding and collision, was compelled to have the said brig taken to the port of Detroit for repairs, where she now is, being repaired at a necessary expense, including the expense of towing her and cargo to Detroit, to said libellant, as libellant is informed and believes, of about the sum of twelve hundred and fifty dollars.

8 Fourth. That said brig will necessarily be laid up and detained at the said port of Detroit, in order to repair the damages done to her by said grounding and collision, as libellant is informed and believes, for about the period of nineteen days, that the time of the said brig while so laid up for repairs is worth to said libellant, and the said brig could have earned for said libellant and could have been chartered by said libellant for the sum of seventy-five dollars per day, and for the whole time mentioned was worth to said libellant, the further sum of about eleven hundred and twenty-five dollars. That the said libellant, paid, laid out and expended in the way of wages for the officers and crew of the said brig and in the way of payment for their board the further sum of about three hundred dollars, and that said libellant, by reason of the said ground ing and collision, suffered damages in all, in the sum of two thousand six hundred and seventy-five dollars, as near as libellant can now estimate the same.

Fifth. That the said brig "General Worth," at the time of said grounding and collision, was tight, staunch and strong, wall
9 well, officered, manned, equipped and provided, and in all things fitted for the voyage she was then prosecuting; that her cargo was well stowed, that her officers and crew, well, even properly stationed and attentive to their several and rispective duties, that her lights were properly placed and brightly burning, and that said grounding, collision, and the damages consequent thereto,

were caused by the fault, carelessness and recklessness of the officers and crew of the said tug "J. E. Eagle" and the said barge "Franklin Moore," and not from any fault, carelessness, or want of skill on the part of the officers and crew of the said brig "General Worth," or her owner, the said libellant; and that the said libellant, by reason of the premises stated as he is informed and believes, has a lien upon the said steam tug "J. E. Eagle" and said barge "Franklin Moore," and a claim against their masters and owners for the damages suffered by him by said grounding and collision as aforesaid, which lien and claim are enforceable in this court.

Sixth. That said sum of money is still wholly due and owing to said libellant for the damages suffered by them as aforesaid, and that no payment therefor has been made, although often requested.

Seventh. That all and singular the premises are true and
10 within the admiralty and maratime jurisdiction of this court.

Wherefore libellant prays that process in due form of law may issue against the said steam tug "J. E. Eagle," her engines, machinery, boats, tackle, apparel, and furniture, and against the said barge "Franklin Moore," her boats, tackle, apparel, and furniture, and that all persons interested therein may be cited to appear and answer all and singular the matters aforesaid, and that this court will pronounce for said libellant's claim, and condemn the said steam tug "J E. Eagle," and the said barge "Franklin Moore," to pay the same, with the costs accruing thereupon, and for such other and further relief as may to law and justice appertain.

WILLIAM T. FRASER.
W. A. MOORE,
Libellant's Proctor

STATE OF MICHIGAN, *County of Wayne, ss*:

Willirm T. Fraser being duly sworn, deposes and says that he has heard read the foregoing libel by him subscribed, and knows the contents thereof, and that the same is true, of his own knowledge, except the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

WM. T. FRASER.

11 Subscribed and sworn to before me, this 15 day of September, A. D. 1864.

L. S. HODGES,
Notary Public Wayne county, Michigan.

12 District Court of the United States for the eastern district of Michigan.—In admiralty. William T. Fraser *vs.* the steamtug "J. E. Eagle," the barge "Franklin Moore." Libel. Filed in clerk's office, Sept. 17th, 1864. Jno. Winder, clerk. W. A. Moore, proctor for libellant.

13 In the District Court of the United States for the eastern district of Michigan.

THE STEAM TUG "J. E. EAGLE," impleaded with barge "FRANKLIN MOORE," *vs.* WILLIAM T. FRASER, owner of schr. Gen. Worth. } In admiralty.

The answer of Michael B. Kean, sole owner of the steam-tug "J. E. Eagle," to the libel of said Frazer, alleges—

First. That he is true and bona fide owner of said tug "J. E. Eagle," and no one else is the owner. That as to the first article of said libel he is ignorant, and therefore denies the same, and requires strict proof thereof.

Second. That as to the second article, he admits said tug to be enrolled and licensed.

Third. That as to the 2d, 3d, 4th, 5th, and 6th articles of said libel, the same is in great part untruly alleged and pleaded. That this respondent is entirely ignorant of the facts therein stated, of his own knowledge, and therefore denies the same, except as hereinafter admitted, and requires strict proof of the same.

Fourth. That the facts were and are that the said tug
14 Eagle, in command of skillful officers, fully manned, equipped, and provided with her officers and men, attentive to their duties, was towing the said General Worth and said barge down through Lake St. Clair.

That while so in tow, the said sch'r Gen. Worth was run into, as the respondent is informed, by the barge F. Moore, and without any fault, carelessness, or want of skill on the part of those on board of said tug, and that said alleged damage cannot and ought not to be attribued to the fault, or want of skill of those in charge of said tug.

He denies that said schooner was tight, staunch, and strong; but on the contrary, was old, rotten, and nearly worthless. He denies that there was any such amount of damages as is in said libel alleged.

He denies that in such a case said libellants are entitled to receive such damages as are alleged in said libel, and denies said libellant has any lien or claims on, or against said tug enforcable in this honorable court, sitting in admiralty for said alleged damage.

Fifth. And alleges that if proper care and skill had been used on the part of the officers and crew of the said General Worth, and said [said] barge F. Moore, and they had been sufficiently officered
15 and manned no collision would have occurred and no damage been done.

M. B. KEAN.

Subscribed and sworn to before me this 31st day of October, A. D. 1864.

C. J. O'FLYNN.
Notary Public, Wayne county, Michigan.

16 No. 811. Circuit Court for the United States for the eastern district of Michigan, in admiralty. The steam-tug "J. E. Eagle," the barge "Franklin Moore *vs.* William T. Fraser, owner of schooner "General Worth." Filed in open court November 14th, 1864. William D. Wilkins, dept. clerk. Answer. Newberry & Pond, respondent's proctor.

17 The District Court of the United States for the eastern district of Michigan.—In admiralty.

The claim and answers of Alexander A. Doty to the libel of William J. Frazer, against the steam-tug J. E. Eagle, and the barge Franklin Moore, their tackle, &c.

To the Hon. Ross Wilkins, district judge of said district:

The said Alexander H. Doty alleges that he is, and was, at the time of the said collision mentioned in the libel in this cause, the sole owner of the barge Franklin Moore, her tackle, &c.

First. That as to the allegation in said libel, numbered first, this respondent has no knowledge, nor has he any information or belief as to the truth of the matters alleged therein.

Second. This respondent admits to be true the matters set forth in the second allegation contained in said libel.

Third. As to the third allegation in said libel, this respondent has no knowledge, information, or belief, except the fact therein alleged that said tug did take in tow the said schooner "Telegraph,"
18 the brig "General Worth," and the said barge "Franklin Moore," and that they were, without any objection being made thereto, towed in the order as stated therein, the said barge drawing the least water being the third and last vessel, and the facts following:

That said tug, at Port Huron, near the upper end of St. Clair river, took in tow the said schooner, brig, and barge, about eight o'clock of the morning of the day mentioned in said libel; that said tug arrived at a point called Baby's Point, about thirty miles below Port Huron, six o'clock in the evening, and remained there until about twelve o'clock at night, and passing through Lake St. Clair, near the head of Peach Island. It being a very dark and cloudy, with a strong breeze, said tug, through gross negligence and ignorance of those having command of her, she, at about half-past two o'clock in the morning of the day after leaving Port Huron, was from one-half of a mile to one mile out of the usual and correct course which she ought to have taken, and was the sole cause, and caused said brig "General Worth" to run aground, on what is well known and called Peach Island Reef, as stated in said libel.

That the barge of this respondent was being towed with a line of only about seventy-five feet in length, by and at the special
19 direction and command of the master of said tug, and which was of the same length when starting from Port Huron, and so continued until the collision mentioned in said libel

That said brig was aground for the cause mentioned in said libel;

that it being dark, and there being a strong breeze, the barge did unavoidably, not negligently, collide with said brig, but what damage was done to said brig, or caused said libellant, this respondent does not know, and cannot state, but he denies that said owner sustained any such damage as alleged in said libel.

This respondent, further answering, said third allegation alleges the fact to be that said tug having in tow said schooner and brig, also took in tow the said barge opposite Port Huron, aforesaid; that said brig, with proper management, should have come directly through to Lake St. Clair and the Detroit river the same day, the first day of September, and should have arrived in Detroit river by sundown of said day, and avoided all dangers of the night; that instead thereof, said tug was without cause stopped and delayed at different places, and at Baby's Point, so called, until midnight; that when said tug took said barge in tow, all the lines was given out by said barge
20 as instructed by the master or officer in command of said tug, and the same length of line was continued without objection being made on the part of said brig until said collision; that at the time of said collision, the said line being short, and it being dark, and the wind being strong, and no notice whatever being, or was given of said brig being aground, there was not any possible way of escape for said barge colliding from with said brig· that said barge was properly manned and handled in every respect to prevent said collision, if the same had been possible, and was without fault in the position she was placed, and was being towed. And this respondent claims and insists that the whole fault and negligence which caused said collision was that of said tug.

Fourth and Fifth. As to the fourth and fifth allegations of said libel, this respondent says he has no knowledge, and cannot state what damages direct or cause, caused said libellant; but this respondent says that he is informed said brig, in the course of her then voyage, had met with disasters, and become greatly damaged; that she was not sound, but weak, and badly decayed; and this respondent alleges, upon his best information and belief, that the actual
21 damage caused said brig by said collision at the head of Peach Island, would not, and did not, exceed the sum of five hundred dollars, and that the repairs supposed to be made on said brig, includes many not caused by said collision.

Sixth. As to the sixth allegation contained in said libel, this respondent says that he has no knowledge except as stated in said libel.

And this claimant and respondent prays that said barge, her tackle, &c., may be released from seizure by said libellant, and that he may be hence dismissed with his costs and charges in this behalf.

ALEXANDER H. DOTY.
D. C. HOLBROOK,
Proctor for Doty.

STATE AND DISTRICT OF MICHIGAN,
County of Wayne, ss:

On this twenty-fourth day of October, A. D. 1864, personally appeared before me, the undersigned, the above claimant, Alexander H. Doty, and being by me duly sworn, did depose and say that he has heard the above answer by him subscribed read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters stated on his information and belief, and as to those matters he believes it to be true.

F. A. CANFIELD,
Notary Public, Wayne County, Michigan.

22 811. District Court of the United States eastern district of Michigan. In admiralty. William T. Moore *vs.* the tug J. E. Eagle and barge Franklin Moore. Answer and claim of Alexander H. Doty for barge Franklin Moore. Filed in clerk's office, Oct. 31st, 1864. Wm. D. Wilkins, dept. clerk. D. C. Holbrook, proctor for Doty.

23 In admiralty.

DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Michigan, ss:

On this twentieth of April, in the year of our Lord, one thousand eight hundred and sixty-five, before William D. Wilkins, esq., a commissioner duly appointed and empowered to take acknowledgments of bail, affidavits, and dep[ep]ositions, &c., within the eastern district of Michigan, in the matter of the libel and claim of William J. Fraser. Owner Brig. General Worth libel against the steam-tug, J. E. Eagle, her engine, &c., and against the barge Franklin Moore, her boats, &c., in a cause of collision, civil and maratime, moved and and prosecuted in the District Court of the United States for the district aforesaid, which day personally appeared Michael B. Kean, as claimant of the said steamtug J. E. Eagle and her engine, boat, &c.

And the said Michael B. Kean, submitting himself to the jurisdiction of the court, bound himself, his heirs, executors, and administrators, in the sum of five thousand three hundred and fifty dollars unto the said William J. Fraser, that the said shall abide and answer the decree of the said court in the aforesaid cause as against
24 the said tug J. E. Eagle, and unless he shall so do, he does hereby consent that execution shall issue forth against him his heirs, executors, administrators goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above-mentioned.

M. B. KEAN.

Taken and acknowledged this 20th day of April, A. D. 1865, before me.

WILLIAM D. WILKINS,
U. S. Commissioner, 7th Circuit and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss*:

Appeared personally Michael B. Kean, of Detroit, and made oath that he is worth the sum of fifty-three hundred and fifty dollars of lawful money of the United States of America, after payment of his just debts, in real estate, subject to execution, within the eastern district of Michigan.

On the 20th day of April, A. D. 1865, the said Michael B. Kean was sworn to the truth of the above attestation before me.

WILLIAM D. WILKINS,
25 *U. S. Commissioner, 7th District of Michigan.*

26 Endorsed: No. 811. District Court of the United States, for the eastern district of Michigan.—In admiralty. Stipulation to answer judgment. William J. Fraser *vs.* the steam-tug J. E. Eagle *et* Barge Franklin Moore, as against said tug. Taken, acknowledged, and filed April 20th, 1865. William D. Wilkins. dept. clerk.

27 In admiralty.

DISTRICT CIRCUIT OF THE UNITED STATES,
For the Eastern District of Michigan, ss:

On this twenty-eight day of March, in the year of our Lord, one thousand eight hundred and sixty-five, before me, William D. Wilkins, a commissioner duly appointed and empowered to take acknowledgments of bail, affidavits, and depositions, &c., within the eastern district of Michigan, in the matter of the libel and claim of William J. Fraser against the tug J. E. Eagle, her engine, &c., and against the barge Franklin Moore, and her boats, &c., in a cause of collision, civil and maratime, moved and prosecuted in the District Court of the United States for the district aforesaid.

Which day personally appeared Alexander H. Doty, as claimant of the said barge Franklin Moore, and her boats, &c., and produced for surety De Witt C. Holbrook, of Detroit in said district; and the said Alexander H. Doty and De Witt C. Holbrook, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of five thousand three hundred and fifty dollars unto the said William J. Fraser, libellant, that the said Alexander H. Doty shall abide and answer the decree of the said court in the aforesaid cause as against
28 the said barge Franklin Moore; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, administrators, goods, and chattels, lands, and tenemants, wherever the same may be found, to the value of the sum above-mentioned.

A. H. DOTY.
D. C. HOLBROOK.

Taken and acknowledged this 28th day of March, A. D. 1865, before me.

WILLIAM D. WILKINS,
U. S. Commissioner, 7th District and Eastern District of Michigan.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Appeared personally, of Detroit, and made oath that he is worth the sum of fifty three hundred dollars, of lawful money of the United States of America, after payment of his just debts, in real estate, subject to execution, within the eastern district of Michigan.

On the day of , A. D. 1864, the said were sworn to the truth of the above attestation before me.

WILLIAM D. WILKINS,
U. S. Commissioner, 7th Circuit and Eastern District of Michigan.

29
30

Endorsed: No. 811. District Court of the United States for the eastern district of Michigan, in admiralty. Stipulation to answer judgment. William J. Freaser *vs.* the steam-tug J. E. Eagle and barge Franklin Moore, as against the said barge F. Moore. Taken, acknowledged, and filed March 28th, 1868. William D. Wilkins, dept. clerk.

31 District Court of the United States for the eastern district of Michigan.—In admiralty.

WILLIAM J. FRASER
vs.
STEAM-TUG J. E. EAGLE and BARGE FRANKLIN MOORE.

Depositions taken on the part of the libellant in said cause before Thomas S. Blackmar, a United States commissioner for said district, to be used and read on the hearing of said cause, subject only to all legal objections as to the competency and relevancy of said depositions.

William A. Moore, esq., appears for libellant, and John S. Newberry, esq., for respondent Eagle, and D. C. Holbrook, esq., for barge Franklin Moore, James A. Davidson being duly sworn, deposes and says:

I am twenty-eight years of age. I reside in Buffalo, New York. I am a seaman; have sailed thirteen years on salt water and the lakes; have sailed six years or so on the lakes.

I was on the Brig. General Worth, when the barge Franklin Moore run into in the early part of September last. I was on her
32 in the capacity of seaman. I was in the port watch. Another man whom we called Mike, and a boy were in my watch. My watch closed at twelve o'clock.

The collision took place a little before two o'clock. I came on deck immediately. When the Worth struck bottom, she did not stop still, but dragged along probably her length or her length and a half before she stopped. I heard her when she first struck. She rasped along some little time, but I cannot say how far she went.

I believe her line was carried away. The collision took place well over towards the Canada shore and near the head of Detroit river.

I cannot state whether the barge struck her before or after I came on deck. I know everything was done when I got aft. The barge struck the Worth right amidships, at her stern post as fair amidships as could be. We were taken in tow some four or five miles up in Lake Huron. The tug had the schooner Telegraph in tow when she picked us up.

I was at the wheel from ten to twelve o'clock that night. When I went to the wheel we were just above the Narrows—above the lights. When I left the wheel, we were about half way across the lake, I think.

I should judge that the barge's line to us was from fourteen
33 to sixteen fathoms long. It was a short line. It was a good deal shorter than the line between the Worth and the Telegraph. While I was at the wheel the tug steered "wild." I could hardly steer after her. I mean by wild steering that the tug went allways port and starboard, and did not keep straight on her course. The mate had charge of our deck during my watch. When I said Mike and a boy were in my watch I intended to say that the mate was in that watch too. James F. Slattery took the wheel from me.

Ques. Did you have any conversation with Slattery when he took the wheel about the tug's steering wild, and if so, what was it?

(Objected to as incompetent and leading.)

Ans. There was some talk between us about it. I told him to look out for the vessel for the tug was steering wild. It is customary on leaving the wheel to mention it to the man taking the wheel if there is anything unusual in the running of the tug.

I took the wheel from Mike Moran, I believe. He told me the tug was steering wild, and to look out for the vessel.

(Last answer objected to as incompetent.)

Cross-examination.

I believe the wind was easterly that night. We had no sails
up. The mate and myself were on deck all the time during
34 my watch. Our vessel drew a little over ten feet of water, I think. It is not my business to know, and I cannot therefore tell. We had a bright light in the starboard fore rigging of the Worth. I think the Telegraph had a bright light too. I steered after her light the best I could. I had some trouble to keep after her light. It was very difficult to steer after it. I could not say how many points we got off from the Telegragh, but she steered very wild. She got off a point or two, and probably more on my bow, and that is what I mean by steering wild. She swung slow. She would be a number of minutes swinging off, and then she would swing back again. I was steadying our vessel by the light of the Telegraph, and not by the stars or the compass. The binacle slide was shut to keep the light out of my eyes, and I could not see the compass, and that is the reason I could not answer your question as to how many points we swung from time to time.

When the Telegraph swung off to starboard the tug lights would

open to port. Sometimes her lights would open to starboard, and sometimes to port according to the shear.

The Worth was loaded with lumber, and was bound from Saginaw to Buffalo. We generally tried our pumps every two hours
35 before the collision. I did not remark that she leaked any more than vessels usually do. I did not hear them say she was going into dry dock when she got to Buffalo.

I cannot say where I was when the barge was taken in tow. I did not see anybody forward on the barge when I was at our wheel. I saw somebody at the barge's wheel, but I could not say whether it was a man or boy.

The Worth was still aground the morning after the collision. I cannot give any idea of how far we were from the shore. I know the Canada shore was the nearest, and that is all I remember about it. I think the American shore was four times as far off as the Canada shore. The Worth is being repaired now in Buffalo.

Re-direct-examination.

Ques. Was the steering wild, which you have mentioned, done by tug or by the Telegraph?

Ans. I suppose it to be the fault of the tug. It was a nice night —star-light but no moon, I think. There was no fog or haze. I have been through that channel often, but never saw a chart of it, and am not very familiar with the channel. In the morning we found ourselves to port of the usual place of coming down there.

36 JAMES A. DAVIDSON.

Subscribed and sworn to before me this 6th day of January, 1865.

THOMAS S. BLACKMAR,
U. S. Commissioner.

James Collins, being duly sworn, deposes and says: I reside in Buffalo, New York. I am about twenty-eight years old. I am a sailor; have sailed eleven or twelve years. I have sailed as an officer, off and on, for about four years, on the lakes. I was first-mate of the Worth when she collided with the Moore. I had been mate on her about four months. I had sailed on her the season before, with Capt. Fraser. I was receiving the going wages of first-mates.

We were taken in tow by the tug Eagle, about three miles out of Lake Huron. We loaded in Saginaw with lumber, and were bound to Buffalo. We were taken in tow between eight and nine o'clock in the morning. The tug took the Telegraph in tow before she took us. We rounded to at the old railroad dock at Port Huron. The tug left us at the dock, and went off, and then came back with the barge Franklin Moore. I think the tug was gone about two hours.
It may have be a little less or more; when she came back she
37 came round and rounded to under the quarter of our vessel, and gave us the tow-line of the barge. I then made the tow-line of the barge fast to our starboard timber-head. The tug went

on, and some one on board the barge was paying out her tow-line, when the captain of the tug sung out to him that that was enough, and he then made the line fast. The tug then went along and got the Telegraph's line, and then came on to Newport with the tow. I think it was Newport. There we stopped a few days. I supposed they were going to take in wood. I did not see them take any in, or do anything while we were there. I did not notice how long the tow-line was between the tug and Telegraph. I should judge that my line, between the Worth and the Telegraph, was between twenty-five and thirty fathoms. The line of the barge to us, was between fifteen and sixteen fathoms, as near as I chould judge. I should not think it was any more than half of the length of the line between us and the Telegraph. From Newport we went across the river from Algonac, to take in some wood on the Canada shore. We staid there some five or six hours, I guess. We left there just as it was getting dusk. We came with the tow right along down the to flats. The tug steered across the flats, and it was as much as I could do to
38 steer after him. The tug steered from shore to shore I did not know what was the matter with her. The first thing I knew, between one and two o'clock in the morning, the Worth struck forward. As soon as I felt her touch, I sung out to the wheelman of the barge to port his helm. I did not see him port, and do not know whether he did so or not. The barge came on and struck us right square on our stern post. The barge was loaded with lumber. We ran about half the length of our vessel after we first struck, before we fetched up. The tow-line parted, and the tug went on. The line was between a six and a seven inch line, and had been used a little. It was new last winter. The blow of the barge did not drive us off. The collision carried away our transom and deck beams, and our stern post. It damaged us almost up to the forward part of our cabin. It unshipped our wheel, and knocked out the wheel stand. If she had not struck our stern post, she would have sunk us right there. I think we had 215 M of lumber. We drew forward 9 feet 6 inches of water, and aft 9 feet 10 inches, I think. I am not certain. It may have been 8 feet 6 inches forward, and 8 feet 10 inches aft. I think the latter figures are the correct ones.
39 The tug came back to us again, after letting the Telegraph come to an anchor in the river. We sounded while we were lying there. There were 10 feet forward, and about 11 aft; on starboard side, at midships, 8 feet 3 inches, and on port side about 7 feet 6 inches. The tug asked me if I was aground. I told him it looked something like it. The captain of the tug came aboard, and went down into the cabin to see what damage was done. The tug staid there till day-break, before she tried to get us off. I then got a hawser out of the cabin, a 10 inch hawser, I think. I made it fast to the mainmast, and gave it to the tug, and she jerked on us and parted the hawser. We hauled it in and gave it to him again, and he parted a second time. We found we could not her off by jerking at her, and we then engaged the barge Franklin Moore to light her off. We lighted her off by putting 15 to 20 M. on board the barge. The

Eagle then towed us down to Detroit, and she was repaired at Campbell & Owen's dock. She was there about three weeks. Some of the crew were paid off and left. All were paid off but me and the cook, and an ordinary seaman called William, and whose other name I do not recollect. We remained. When we were first taken up by the tug, she was to tow us through to Lake Erie. The cap-
40 tains of the tug and Worth had some conversation, but I do not know what it all was. I do not know of any necessity for us to wait so long at Newport. Opposite Algonac, on the other side of the river, we took on some wood, and I understand we waited for the captain of the Telegraph, who lived there, to go home. My watch was from eight to twelve, that night. Davidson, Moran, William, the ordinary seaman, and myself, composed my watch. I believe the burthen of the Worth is two hundred and fifty-seven tons. Her crew consisted of nine, all told. The captain, mate, five full seamen, an ordinary seaman, and cook. She did not leak any of any account. She was in good condition, and well equipped and manned. She is a good steering vessel. It was a nice night—no moon, but clear and star-light. There was no fog or haze. I mean by steering wild, that the tug went first one way and then the other, and did not follow her course down. From the time I came on deck, up to the time of the collision, I remained on deck, and had charge of it. James L. Slattery was at the wheel from twelve o'clock until the collision. The sails of the Telegraph and the Worth were furled while coming down the river and through the lake. The barge had no sails.
41 I was on the quarter when the Worth first struck. It was at Peche Island Reef where we struck. I am familiar with the channel. In the morning we found that we were between half and three quarters of a mile to the port of the usual channel for vessels coming down there.

Cross-examination.

My watch was from eight till twelve. I did not go off at twelve, because I was waiting to be relieved. After twelve it was the captain's watch, but he had been up the night before, and the day before, and I kept his watch, as he did not come up. He had not left any word not to be called. We had no second-mate. Our captain was in bed at the time of the accident. I was aft when our vessel fetched up. No one was forward on the look-out. I had not noticed that we were out of the channel before our vessel fetched up. I stated that I was familiar with the channel there. I was following the tug, which was the reason that I did not notice that we were out of the usual channel. We had not passed the light at the head of the river when the accident occurred. We had not got quite down to Peche Island when it happened. It happened on the beach at the head of the Island. I told the man at the helm on the barge, to put his helm a port. I was on the aft of our vessel. There was
42 no one forward on the barge. I stood aft where I could see. We were on the Canada side of the channel. We were three

times the length of our vessel from the Island when we fetched up. We had a centre-board in our vessel, but the centre-board box was not hurt, that I know of. I did not hear our captain say he was going into dry dock to repair, when he got to Buffalo.

Re-direct-examination.

We had a full crew on the Worth at that time, as many as we ever carry. The accident occurred at the head of the Peche Island, and just before we got down to it. I have seen Michael M. Kean before to-day. I saw him on the Worth here in Detroit, the day after the collision. He did not say anything to me then. I saw him again at the dry dock, where the Worth was being repaired. He aked me my name and residence, and I told him.

Re-cross-examination.

When we went aground, we were following directly in the wake of the Telegraph and the tug, as near as we possibly could. I believe our vessel is twenty-six feet wide between the davits. I never measured it.

his
JAMES + COLLINS.
mark.

Subscribed and sworn to before me this 6th day of January, 1865.
THOMAS S. BLACKMAR,
U. S. Commissioner.

43 JANUARY 7, 1865—9 *a. m.*

Same appearance for parties.

James F. Slattery, being duly sworn, deposes and says: I reside in Buffalo, New York. I am twenty-nine years old. I am a mariner by occupation. I have sailed fourteen years on salt water, and about six months on the lakes. I have sailed as chief-mate and second-mate both. I was on the General Worth when the Franklin Moore ran into her, on September 2nd last. I had been on her some twenty-two or three days. I was on her in capacity of a seaman before the mast. I was at the wheel from twelve o'clock until the collision took place. The mate, Collins, was on deck with me. When I took the wheel, I think I was about half way between the outside stakes at the flats and Peche Island beach. I don't think we were quite half way. I had been below four hours, when I came up and took the wheel, at twelve o'clock. I had been turned in. I took the wheel from Davidson.

Ques. When you took the wheel from Davidson, at twelve o'clock, what did he say to you, if anything, about the steering of the tug?

(Ques. objected to as imcompetent.)

Ans. He told me the tug was steering very wild, and to look out for her. I followed the tug in coming across there, and did
44 not come by compass course. The tug steered very wild. It

was as much as I could do to keep after her. We were running straight after the tug when we fetched up. It was a clear, starlight night. No moon and no fog, smoke, or haze. We did not stop still when we first struck, but dragged along half the length of our vessel, I should think. When we fetched up, the line between us and the Telegraph was parted, and the tug went on. I think the line was a six and a half inch line, and was pretty new. The tug left the Telegraph and came back to us, after awhile. Our vessel lay until day-light, before they began to tug to get her off. It was two hours or more. I saw the captain of the tug on our vessel, after the tug came back to us, but he soon went back on board of his own boat. We were lighted off by the barge, and were then towed down by the tug. I had been down that channel four or five times before that. I think we were out of the usual channel, and towards the Canada shore. I think the line between us and the Telegraph was from thirty to thirty-five fathoms. That is about the usual length of line when vessels are in tow. I think the line between the Worth and the barge was about fifteen fathoms long, not more than that. I do not think it was quite half the length of the line between
45 the Worth or the Telegraph. It may have been half. When the man on the barge was paying out his line, I heard some one on the tug tell him to hold on to his line, and it was then made fast. From the time the line of the barge was first fastened on the Worth, it was not changed, to my knowledge—on the Worth nor on the barge, to my knowledge.

Cross-examination.

I was in the captain's watch. He was not on the deck, to my knowledge, at all that evening, before the collision. I think the collision took place on the Canada side. I am positive we were nearer the Canada than the American shore. From the time I took the wheel we followed straight after the tug. I do not know how our vessel ran before that. The tug was steering very hard, and I had to be very watchful to keep after her. I had to put my wheel a few spokes one way, and a few spokes the other, and be very watchful. When we are steering after a tug, the course of a vessel will vary a little from that of the tug, even if the tug takes a straight course. I steadied our vessel generally by the light of the tug, and not by the stars or compass, but sometimes by the Telegraph's lights. The Telegraph followed the tug very well. I kept the lights of
46 tug, if anything, a little on the starboard bow—mostly right ahead.

Re-direct-examination.

I do not know the course of the tug across the channel that night. The tug did not sound a whistle, or ring a bell, or hail us, before we fetched up. The mate and I both hailed the barge just after we fetched up, and told her to port her wheel. We could not have done anything on our boat, to have prevented the barge running into us.

Re-cross-examination.

I did not see any one forward on the barge, when we hailed her. I did not hear any one answer our hail. I could not see that she changed her heading at all, and she hit us plumb amidships. If she had put her helm hard down when we hailed them, she would have passed us on our starboard side. The first I saw of the officers of the barge, was in the morning after the collision, except the captain. I saw him before that.

Cross-examined.

By Mr. Hollbrook:

I do not recollect what time we left Baby's Point, but it was a little after dark. The collision took place about fifteen or twenty minutes to two in the morning. I cannot tell how fast the tug
47 was running; cannot give any idea. I cannot say who gave the orders about the tow-line from the Worth to the barge. It was some one on board the tug. The order from our vessel to the barge, to port her wheel, was given just as our vessel touched ground, and before she fetched up. The time between the order and the collision was very short—very short indeed—but I cannot say how long or how short. I do not know at what time we passed the light-house at the flats.

We stopped at Algonac some time. I do not know what detained the tug there. I did not see her take on any wood there. I think we were at Baby's point at least two hours. I saw them pass a few sticks of wood aboard of her there. Do not know why she staid there so long. I did not see any of the officers or men of the tug go off and take a drink.

I am not skilled in towing or in runing barges, and cannot state whether, with her length of line, she would have missed the Worth had she ported when ordered to do so.

JAMES F. SLATTERY.

Subscribed and sworn to before me, this 7th day of January, 1865.

THOMAS S. BLACKMAR.
U. S. Commissioner.

48 James Collins being recalled, deposes:

The line of the barge was not changed on the Worth from the time it was first made fast until the time of the collision, nor was it changed on the barge to my knowledge. The length of the line remained the same up to the time of the collision so far as I could see.

Cross-examination.

I think the barge's own load of lumber did not come more than from five to eight inches above her deck. If the barge had obeyed my order to put her helm hard a-port she would have passed us on the starboard side, and I think she would have cleared us. I first saw the captain of the barge at about daylight, I think.

Cross-examined.

By Mr. Holbrook:

It is the best of my opinion that the barge would have missed [missed] the Worth had she ported when I ordered her to, but I am not certain. We left Baby's Point just as it was getting dusk—about seven o'clock. We got there between two and three o'clock in the afternoon, I think. I think the tug was going about
49 seven or eight miles an hour at the time of the collision.

his
JAMES × COLLINS.
mark.

Subscribed and sworn to before me this 7 day of January, 1865.
THOMAS S. BLACKMAR,
U. S. Commissioner.

Samuel Boyle, being duly sworn, deposes and says:

I reside in Buffalo, New York, I am twenty-seven years old. I am a sailor. I have sailed twelve years, on salt water principally, and some on the lakes—two seasons on the lakes.

I was on the Worth when the Moore ran into her, in September last. I had been on her twenty-two or three days. I was before the mast on her. She had a full crew of able seamen. She seemed to be staunch and strong. I found no fault with her and heard none found.

I was below from ten o'clock until the collision. I had the wheel from six to eight. We were in the river somewheres when I left the wheel; I could not exactly say where.

The tug did not run steady while I was at the wheel. She sheared about a bit.

The Worth had [had] fetched up before I got on deck. The barge [the barge] struck her before I got aft. I did not turn in again
50 that night. Myself and all our crew remained up the rest of the night.

After the tug come back and alongside, our captain got a pole and was sounding the water. It was from 10 to 11 feet, forward and aft, and 7 to 8 amidships. I do not know whether I saw the tug's captain on board of our vessel after the tug came alongside or not. I think there were between thirty and forty fathoms of tow-line between the Worth and the telegraph. That between the Worth and the barge was fifteen or sixteen fathoms, in my opinion. It may have been half as long as that between the Worth and the Telegraph.

It was a starlight night from the time I came on deck. There was no moon and no fog, mist, or haze.

Ques. Did you hear any one on the tug, while she lay there side of the Worth, say how the tug got out of the way in crossing the lake?

(Ques. Objected to as incompetent and irrelavent.)

Ans. I did.

Ques. What did you hear said, and who said it?

(Ques. objected to as incompetent and irrelevant.)

I heard one of the wheel'sman say that the captain was below drunk and the mate was asleep, and that there was no one to look out for the boat. That was all the conversation we had.

Ques. Was this the man who had the tug's wheel from twelve till two?

51 (Ques. Objected to as irrelevant and incompetent.)

Ans. I could not say for certain, but I supposed him to be the same man.

Cross-examination.

I was told that it was the wheelsman who told me the captain was drunk and the mate asleep. I will not swear that it was the wheelsman.

Ques. Did you not swear a moment ago that one of the wheelsmen told you the captain was below drunk and the mate was asleep?

Ans. I did not swear to that. I was told that it was one of the wheelsmen.

One of the men belonging to the tug told me the man was a wheelsman. There were men present from the tug and our vessel and one or two from the barge, I think. This conversation took place at amidships of the Worth.

Ques. Do you know of your own knowledge whether the man that said that to you belonged to the tug or the barge?

Ans. I know he belonged to the tug; saw him come from the tug aboard of our vessel, and that is all I know about it, except what he told me.

The tug was then alongside of us and so was the barge. I do not know whether the captain was below at the time of the collision or not.

52 *Re-direct examination.*

Ques. Did you see the man who told you the captain was below drunk and the mate asleep at work on the tug after daylight?

Ans. I cannot say th;t I did. I was too busy on our own vessel. He came on to the Worth by himself. A man or two would step aboard from time to time.

his
SAMUEL + BOYLE.
mark.

Subscribed and sworn to before me, this 7 day of January, 1865.

THOMAS S. BLACKMAR,
U. S. Commissioner.

JANUARY *9th*, 1865, 2, *p. m.*

Same appearance for parties.

Francis Owen, being duly sworn, deposes and says: I live at Amherstburg, Canada, when I am at home. I came here from Buffalo with the libellant. I am seventeen years old and passed. I have followed sailing for about two years. I was on the Franklin Moore when she collided with the Worth. I had been on her since spring. She has no sails, but runs by being floated or towed. We

were taken in tow at Port Huron on the morning of the day before the collision. There were in the tow of the tug Eagle the
53 Telegraph, Worth, and the barge. I think the captain of the tug, or some one on it, gave the Moor's tow-line to the Worth. The Worth and Telegraph were then lying at the old railroad dock at Port Huron. We had a crew of three on our barge—our captain, James German, Richard Doherty, and myself. We left Port Huron about eight o'clock in the morning, I should think. Our line was fourteen to fifteen fathoms long, in my opinion. When we received the line and were paying it out the tug hailed us and told us to hold on to our line. Our captain did not mind him, and then he hailed again, but we did not mind, and some of the men on the Worth called to us, and then the tug called again, saying "hold on to your line. What the hell are you doing?" The captain of the barge then merely surged and made the line fast.

We then came on down the river and stopped next at Newport. We were not there long; I cannot say how long. Our line was not changed there, and was not shortened, except to take in slack, about ten feet, perhaps. We then went on again. I am uncertain whether we stopped at Algonac or went over to Baby's Point. From there I think we stopped at Algonac and then went over to Baby's Point. We did not let out more line except the slack which had been taken up. The line on the barge was fastened to our paul post.

We were at Baby's Point two or three hours, I think; I am
54 not sure. We left there just about dusk. In going from Port Huron to Baby's Point I was part of the time at the wheel and part of the time at work in the cabin, and doing whatever was necessary to be done on the barge. After we left the point I was at the wheel part of the time and was turned in part of the time up to the time of the collision. I got up after we had crossed the flats awhile and before the collision. I was at the wheel at the time of the collision; had been there about an hour, I think. I took the wheel from our captain. As soon as I took the wheel, or a little while after that, the captain turned in. It was a starlight night. There was no moon, fog, mist, or haze. I was at the wheel when the Worth fetched up. I was standing up. There was no one forward on the barge. Doherty was turned in. The first I knew, the Worth had fetched up. I heard a man holloo on the Worth. I could not make out what he said. He hallowed a second time, and just then the barge struck the Worth. I could not understand either time what the man said. I heard him halloo, and that was all.

After we ran into the Worth I put my wheel over and let the barge swing alongside the Worth, on her port side, I think. We lay there until ten o'clock in the morning, I think. I was backward and forward on the Worth and the barge. I did not go to bed again after we struck the Worth. I did not see any of the crew of
55 the tug on board the barge. I saw some of them on the Worth.

Ques. Did you hear anything said by any of the crew of the tug as to how she got out of the way and got the Worth aground?

(Ques. Objected to as incompetent and irrelevant.)

Ans. I did. I was told by a man whom I supposed to be the wheelsman, and who was at the wheel, that the mate had turned in and that the captain was below drunk and asleep. This remark was made on the tug. I was standing on the rail of the tug. I think the man's name was Myers. The other boy on our barge knew him, and was on the tug at the time. I should know the man if I should see him again.

Between six and seven in the morning we lignted the Worth off some and took a portion of the lumber off on to the barge.

Cross-examination.

By Mr. Holbrook:

I had been on the barge from the time when she came out in the spring. I cannot say how many times we had been up and down that season. Sometimes we made two trips a week. We had made eight or ten trips, I think.

I think the barge drew six feet of water at that time, but cannot exactly tell. I had been in the habit of steering the barge every trip.

Before this time, when the barge had been towed, we used
56 about one hundred and forty feet of line. Somewheres there, but I cannot say exactly. With that length of line we could handle the barge easily.

The tug steered pretty wild. She sheared every which way, so that we could hardly keep after her.

I think I could steer our vessel as well with the length of line which we had as with a longer one, but I am not certain. I did not have a great deal of difficulty in following the Worth. The steering apparatus of the barge was in order.

A little before we came on to the flats the captain of the Worth told me to keep straight after him. I received no orders from the tug to my knowledge.

Ques. Could you have avoided the collision if you had understood the first order?

(Ques. Objected to as incompetent, and because they were bound to have some one on the forward part of the barge to pass orders.)

Ans. No, sir; it could not have been done.

I had no time after the second order was given. Just as he was hailing we struck. I should think we were going about six or seven miles an hour. There was no liquor on the barge. None of us on the barge used liquor.

I did not know what the matter was until just as we struck. I could not have told that the Worth was aground when I first
57 heard the order from her.

Cross-examined.

By Mr. Newberry:

After I left the barge I went on to the Worth as a man before the mast. Captain Fraser hired me about a week after the accident, I

think. He gave me better wages than I had been getting on the barge. Last season was my second one as a sailor. The first season I sailed on scows here in the river. I cooked a part of the time on the barge, but not all the time. I and Doherty were cooks change about. I do not know which was the best cook. I did not cook on the scows the summer before.

After the captain turned in I had sole charge of the barge. There some sea on in coming across Lake St. Clair.

The lumber on the barge was a foot and a half above her decks, I think. It may have been more. She had no rails.

When the tug hailed us about our line we were at the dock at Port Huron and the tug was rounding to to go down the river. The barge was just starting from the dock.

I followed the Worth and not the tug. I steered after the Worth's light and not after the tug's.

I was told by the mate of the tug and by a boy on the tug that Myers was a wheelsman. He was the man who told me the captain was drunk and the mate asleep. I heard him telling one of
58 the men of the Worth that he was wheelsman.

The wheelsman was in the pilot house and I was standing on the rail. I asked him where was the mate. He said he was below asleep, and that the captain was drunk and had been drunk the night before. This conversation took place about three hours after the collision, I think. I was standing then on the port side of the tug.

Re-cross-examined.

At the time of the collision I was standing on a platform about two feet above the deck. There was nothing in front of me to obstruct my view, except the cabin, and that came up to my breast. I had a clear view right through.

Mr. M. B. Kean did not offer to hire me at all

Re-direct examinalion.

The libellant offered to hire me three or four days after I spoke to the mate about it. I spoke to the mate about first. This was three or four days before I went on wages. When I first went on wages I got ten shiliings a day. The men had eighteen shillings a day. The other ordinary seamen had twelve shillings a day, I think.

FRANCIS OWEN.

Subsribed and sworn to before me this 9th day of January, 1864.

THOMAS S. BLACKMAR,
U. S. Commissioner.

59 JANUARY 10, 1865, 3, p. m.

Toussant Fortan, being duly sworn, deposes and says: I live at Algonac. I am twenty-one years of age. I sail in summer, and do anything I can in winter. I have sailed five seasons on the lakes between Saginaw and Buffalo, and the intermediate ports. I am acquainted with the St. Clair flats and lake.

I sailed, on the schooner Telegraph, all last season. I was on her

when she and the Worth, and the barge, Franklin Moore, were in tow of the tug, J. E. Eagle, and when the collision took place between the Worth and the barge. The collision took place at about half-after one at night. From twelve until the collision, I was at our wheel. From eight until twelve I was turned in and asleep. It was a clear stary night, no moon, mist, haze, or fog.

The tug ran about half a point out of her course to the eastward. She ran first one way and then the other, and did not run steadily. She sheared about. I followed the tug and did not sail by compass.

When the Worth fetched up, she was running as near after the tug as could be. We were directly after the tug, and the Worth right after us. The Telegraph hit bottom twice. The second time she hit, she raised the rudder and split the box to the patent
60 wheel. This was about two minutes before the Worth fetched up. I did not hear any whistle or hail from the tug. Not a word was said on board of her. The line between us and the Worth parted right at our timber head when the Worth fetched up. We came mighty near fetching up, but at the rate we were going we went over. We were going seven or eight miles an hour. After the collision the tug took us down to the head of Hog Island, and we laid there the rest of the night. The tug went back to the Worth. We sailed down to Detroit in the morning.

On the morning of the night of the collision, and after we got to Detroit, I went on board the tug, and asked the captain when he could take us along down the river. He said in about a half an hour. We waited for him, until one o'clock, and he did not come, and we sailed on down the river. We could not see that the tug was firing up, and we thought we would not wait for her any longer.

Ques. What condition was the captain of the tug in when you went on board the tug? Did he appear to have been drinking?

(Objected to as irrelevant.)

Ans. He was high—pretty high, certainly; he was not dead
61 drunk, but was as near it as he well could be.

The line between our boat and the Worth, was about twenty-five or twenty-six fathoms. I should judge that it was about fifteen or sixteen fathoms between the Worth and the barge.

Cross-examined.

By Mr. Newberry:

There was one man who belonged on the tug, on board her with the captain, when I saw him in Detroit. I think he was the engineer. I did not see any one else there except these two.

The tug steered about half a point off her course eastward from the middle of Lake St. Clair. I noticed her change of course by the compass when she made it. Before she changed she was steering southwest by south; after she changed she steered southwest by south half south. I did not say anything to our officer about her being off her course. He was below, and I did not say anything to him. I and my brother were the only ones on deck. My brother was before the mast. Our vessel was drawing nine feet and three inches of water.

Cross-examined.

By Mr. Holbrook:

We left Port Huron in the forenoon, but I cannot give the hour
From there we went to Newport, I think. We stopped at a
62 dock a little above Algonac, and from there the tug went over to Baby's point, and the vessel staid on this side. I think our vessel did not go to Baby's point. It was getting dark when we got on the flats. I had not turned in before we left Newport.

I heard no order or hail from the tug before the Worth fetched up. I did not see any body on deck on the tug at the time of the collision or afterwards until I saw her captain in Detroit. I did not hear anything said on the tug when she left us near Hog island. If there had been any body moving on the deck of the tug I could have seen them. I was aft at the wheel. When the tug cast off our line she told us to hall in, and said the was going back to the other vessel.

Re-direct examination.

When the Telegraph first fit, our captain was below, but we got on deck just as the Worth fetched up. There must have been some one on the deck of the tug to cast off our line when she left us near the head of Hog island.

his
TOUSSANT + FORTAN.
mark.

Subscribed and sworn to before me this 10th day of January, 1865.

THOMAS S. BLACKMAR,
U. S. Commissioner.

63

64 Endorsed: District Court of the United States for the eastern district of Michigan. In admiralty. William T. Fraser *vs.* Tug J. E. Eagle and barge Franklin Moore. Libellant's testimony. Court fees, $21 50. William A. Moore, libellant's proctor.

65 District Court U. S., eastern district of Michigan.

WILLIAM T. FRASER, owner of the brig General Worth,
vs.
THE TUG J. E. EAGLE, her engine, boats, &c., and the brig Franklin Moore, her boats, &c.

Testimony on behalf of the libellant.

Case commenced April 12th, 1865.

William T. Fraser sworn. I am the libellent in this case, and the sole owner of the brig General Worth. The is enrolled and licensed in Buffalo. I have owned her two years the 19th of January last

Her burden is 257 tons custom-house measurement—old measurement. I reside in Buffalo. I am a master mariner, and have sailed since 1837. I was master of the General Worth at the time of collision. Have sailed as an officer since 1844; as mate 14 years; as master since that time most of the time; upon salt water mostly. Have sailed as master on salt water. Have sailed 10 years on the lakes. At the time of this collision, we were loaded with lumber, about 200,000, and bound from from Saginaw to Buffalo. We had 9 men, all told; 5 seamen and one ordinary seaman before the mast. The mate was a good man. The vessel was in good condition.
66 She had been docked in the spring, and $900 laid out on her bottom. We were taken in tow about breakfast time, and about 3 miles out in Lake Huron. The Telegraph was taken in tow first. We gave our line to the Telegraph and were towed into Port Huron. The tug was to tow us through Lake Erie. The price, according to the tariff, was $60. The tug towed us to the railroad dock at Pt. Huron, and left us there an hour and ½. She went up around the point and took the barge in tow, and then came down and gave us the line of the barge, and took the line of the Telegraph and commenced towing us down the river. Laid at Newport an hour or so, and took on a little wood there, I think. She then towed us down the river and across to Baby's point on Canada side. We were there all the afternoon, until after supper. I went below and turned in just before leaving Baby's point, and left the mate in charge. I had not slept for 24 hours, when I slept about 2 hours crossing Saginaw bay. It had been smoky and foggy and I had kept up. I woke up after the vessel struck the rocks. My vessel had brought up when I got on deck. As I was getting out of my berth, I heard the mate and wheelman hollow to the barge. I turned in with my pants on and all my under clothes, but without coat or boots. I did not put them on before going on deck. I first saw the light-house, and thought we were down at Fighting Island. I observed the tug and schooner ahead. I thought our line had then parted from the
67 distance, the tug was away from us. The barge had struck us, and was about turning around, and was swinging stem around to the eastward. The blow of the barge did not push us off. This was from ½ past one to 20 minutes before two. There was plenty of water under our stern, 11 feet or over; over 10 feet for ward; 8 feet amidships on starboard side, and on port side 7½. The tug came back about ½ hour after. She come alongside of us and made fast; before she made fast to us we trid the pumps, and found she was making water. I examined to find where she was leaking, and found it was around the sternpost. The barge broke our small boat first, then broke the stern plank, then struck the rudder and broke that; started the stern post and broke all the transoms except the lower one; it broke 4 deck beams and all the joiner work in the after end of the upper cabin. The captain of the tug came aboard, went aft and looked at the damage, and we consulted about pulling the vessel off, and he said we had better lay there till daylight. I asked him to try it then, and he would not agree to it. It was a fine starlight night, no fog,

Cross-examined.

By Mr. Holbrook:

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no smoke or haze. We could see all around. The wind had been south the day before, and at the time was light and from the eastward. None of the vessels had sails up. The captain then went back to his own boat, and I did not see him again until daylight. On our boat we attended to the pumps. None of my crew went to
68 bed to my knowledge. The captain and I could not agree about getting my vessel off. He said his mate was a good pilot, and it was singular he should have got the vessel off there; that he (the captain) was below. I engaged the Franklin Moore after the tug had hitched to us and broken the line one or twice, and she lighted us off; we then lashed the barge alonside, as he had a good rudder, and got down to Detroit with the tug on one side and the barge on the other. We got to Detroit between 10 and 11 o'clock, and went to Campbell & Owen's dock for repairs. We were at that dock 19 days. I discharged 5 of the crew a day or two after coming to the dock, leaving only the mate, 1 seaman, and the cook, just enough to attend to the pumps. During the afternoon the length of the line between us and the Telegraph was 28 or 30 fathoms, barge and us, about ½ of that, I should think. When the line of the barge was made fast to us, I was on the lumber right over my mate. When we left the dock at Port Huron or Newport there was a order given from the tug, either from the mate or captain, to hold on to the line; there was enough of it. The line was not changed, to my knowledge, before I went below at Baby's Point. When I found my boat aground, we were on the outer end of Peche Island reef; that was ¼ or ½ mile out of the usual channel. I know the usual channel. When the captain of the tug came on my boat he seemed to to be very stupid; at daylight his face was very red.

69 *Cross-examination.*

When the captain came aboard our boat, I don't say he was drunk. but think he acted more like a drunken man than a sober one. I did not think at the time that he was drunk. I was woke up by the vessel grounding, and hurried on deck. I had command of my vessel, and my orders to light her off, I must have given. We might have lighted her off as well that night as in the morning. The captain's judgment, about putting her off, proved correct. On that trip, coming over Saginaw bar, a vessel's bowsprit touched the taffrail and turned it over; it was settled for $15; that was repaired at Campbell & Owen's dock, and was charged in the same bill. The taffril was turned right over and broke at the ends. Our vessel leaked a little, and we pumped a few strokes about every 4 hours. The Worth was built in 1848; 16 years old last fall. We did not intend to put her in the dry dock that fall, and never said so to any one. We did not fully repair her at the dock here. We repaired what we could get at. The vessel was rebuilt in Buffalo that fall to some extent; that was during the winter after she laid up. Before this accident I did intend to rebuild the vessel during the winter, in order to make a grain vessel of her. She was a lumber vessel before. In rebuilding at Buffalo, we used the new work and material put in at

Campbell & Owen's dock, but would rather it had not been in
70 there on account of the damage done us at the Peach Island.
We received from the Home Insurance Co. $911. The agent in Buffalo was Captain E. P. Dorr. Captain Dorr told me to follow it up, and he would pay his proportion of the expenses. We left Port Huron, in tow, about 11 o'clock a. m. We got to Baby's Point sometime in the p. m. I think it is about 14 miles there, and think we remained at Baby's point about 3 or 4 hours, from 2 until 5 or 6. I was asleep when we left Baby's Point. I was tired waiting and went to bed. The tug took on enough wood to last her to Lake Erie and back, probably. She took on two cords at Newport. My vessel drew 8 feet, 8 or 9 aft, and not quite so much forward. By running aground the damage done to our hull I am unable to state.

The captain of the tug said he would not pull us off that night, because he could see better by daylight where the deep water was. I told I knew where it was and would direct him.

The barge must have been 120 or 130 feet long. I think she would carry less than my vessel. I think good seamanship would require more than one man on deck of the barge.

I do not consider a boy 17 years old, shipped as part cook and part sailor, a competent hand to have charge of a barge under such circumstances. On a vessel, we consider it necessary to have an
71 officer on deck, beside the man at the wheel. It is the duty of the vessel in tow, where the 1st vessel grounds, when the order is given to port, to do so.

I was present all the time my vessel was being repaired, and had it cheaply done as possible. They renewed her stem throughout and patched the joiner work up, the large transom was not taken out, nor the small ones, they were patched up. I saved $100 by not taking out the large transom. The width of our vessel at the taffril, was a little over 19 feet. After we had lighted our vessel up a foot, and got to the dock, my vessel did not leak but little more than it did before, but I do not recollect telling Captain Cottrell so. Hitchcock, Gibson & Co., rebuilt our vessel in Buffalo. Gibson did not allow us a cent on account of this work put in at Campbell and Owens, and he did not tell us. Her stem was only 2 years old at the time of collision.

Examined by Mr. Holbrook on the part of the barge: I have often been towed down from Lake Huron to Lake Erie by different tugs. I took the first that came. The usual time it takes from Port Huron to Detroit is from 10 to 15 hours. While I was up from Pt. Huron to Baby's point there was a delay of 1 hour and ½ at Newport. We were ½ hour or so at Baby's Point after we had wooded up, before I
72 went to bed. I had not inquired to find out when we would leave there. Can't say how much wood was taken on there.

The rate of speed was probably 6 or 7 miles. It was an easy tow. I knew Frank Owens. He was on the barge before I hired him. He is a good wheelsman. Can steer as good as a man. I put him at the wheel after hiring him. He could steer my vessel. If the barge had obeyed the order to port, a very few minutes

would have sufficed to clear the vessel. 2 minutes is a long time on such an occasion. I think it might have been done in one minute with that length of line. I don't think it possible, under the circumstances, for the barge to have cleared our vessel. I had been up from ½ an hour to 1 hour after the collision before the captain of the tug came aboard of us. Shortly after that he went on the tug and went to sleep. He did not say he was going to sleep.

Mr. Newberry:

There was nothing to do on the tug until a. m., after he had decided not to pull us off until morning. I would not consider Frank Owen a competent man to have sole charge of my vessel when in tow. I thing the barge would not sheer 10 feet out of line by putting her helm over in running 75 or 80 feet at least, not in the night. If the men were alive and awake to their duty, it might be done as well at night as in the day. When we stopped at Newport, we lay at McDowell's dock, and I talked with him about rebuilding
73 my vessel. I did not ask Captain Cottrell to stop there. She left as soon as the wood was on.

Mr. Holbrook:

I would not consider one man sufficient to have on deck, it requires an officer and a man.

Re-examined.

By Mr. Moore:

I did not intend to rebuild the Worth until I had laid her up for the season.

I did not request any delay at St. Claire, Newport, or Baby's Point. I knew of no reason for delay except that the captain of the Telegraph asked to let him go ashore and that he would pull off and meet the tow when it came along; when my taffrail was turned on a bar in Siganaw bay we were in a tow and it was done by a vessel astern of us. As we lay aground I could see the shore on both sides, from where we lay there was no danger in pulling off towards the American shore; there was plenty of water there; it was light enough to have managed the tug well; a clear night; I filed this libel on my own responsibillity but I had letters from Dorr to use my own judgment about it; there was no arrangement between us, they had not then paid us anything; the gross amount of money paid out to repair the damages done by this collision was near $1,800; (this is objected to by Mr: Newberry.)

WILLIAM T. FRASER.

74 *Testimony on the part of respondents.*

Charles Evans being duly sworn says: I am 28 years old; have sailed 10 years—on the lakes—have been an officer 5 years; sailed all the time on tug boats—and all time between lake Huron and lake Erie; was on the Eagle all last season; captain Boynton was master the first part of the season; we had a full crew, and all the equip-

ments in good order. Thomas Evans and John Myers were the wheelmen; Thomas Evans had the wheel at the time of the collision; they were both good wheelsmen; I remember the picking up of the Worth and Telegraph, September 1st, 1864; I was on deck at the time we brought the barge up; the captain, 1 wheelman, engineer, and one fireman were also on deck; the captain was at the pilot house; I was aft tending to the lines; I gave the line of the barge to the Worth, the tug threw the line to the Worth and did not stop in passing. I did not give any order to the barge about shortening the line or holding on to it or anything of the kind; I heard no such orders given from the tug; I don't think such orders could have been given and I not heard it; the tug must have been a head of the Worth before they could have made the line fast and still going up the river to get ahead of the Telegraph. As we got up to the
75 Telegraph we asked them for their line; she was moored to the dock. I don't remember saying anything to the Telegraph about casting her line off from the dock; we then went down the river and stopped at Newport and put on a few cords of wood; can't say how many. When we were ready to go the captain of the General Worth said he wanted to see some one about rebuilding his vessel next trip and wanted us to wait; captain of the Worth went ashore; when he came back we started off; we then went to Baby's Point for wood; that is a usual wooding place; we took on enough to take us down and back, with what we had on before; that is the usual way tugs do; we fired up and started as soon as the wood was on, there was no delay after the wood was on; there was no delay in commencing to put the wood on when we got to Baby's Point; we got there about 5 o'clock and got away a little after 6. I speak from my best recollection now; I made no note of it at the time. I staid up until we we were over the flats; the captain also was on deck; he had charge of her; we were both looking out for the boat. When I turned in the boat was over the flats; I was called again at 12 o'clock; captain was on deck when I came on deck and Myers at the wheel; Myers had the wheel in the captain's watch, and Thomas Evans in my watch; I asked Captain Cottreall where the vessel was, and he said he thought she was abreast of Grosse point; it was a dark hazy night;
76 there was very little wind from S.E. when I came on deck at 12 o'clock. After coming on deck I steered my vessel by the the compass S. W. by S. The light house of Detroit was in sight; in my watch our steamer was steared steady, she was not allowed to sheer except when I shifted her course; I was forward where I could see on the main deck; she is a propeller; her pilot house is on her main deck, and I was forward of that, the first I discovered was, I felt a slight jar and saw the brig heading off toward the island; the Worth was then not steering straight after us and the Telegraph; the tow line between the Telegraph and Worth parted; we went down a piece and rounded to; I told the Telegraph to get her anchor ready and let go the tow line, and we went back to the Worth; the channel is about $\frac{1}{4}$ of a mile wide there; we grounded on Peach Island shoal, that is above the island, off the upper end; when we went back to

the Worth she was heading on to the land above the island, on the Canada side of the channel. I was not asleep at the time of the accident; the captain was not drunk at the time of the accident; don't think he was under the influence of liquor. I called him when we let go of the Telegraph and got straightened up in the stream, he got up and was not under the influence of liquor; I never saw him when he was. I have seen him take a glass of beer but never
77 anything else; none of the officers carried any liquor on the boat that I know of. After we got back to the Worth I remained up till morning; I did not say, nor did I hear any one else say that I was asleep and the captain drunk. A boy 17 years old, shipped as a cook and sailor, is not competent alone to take charge of a barge in tow; good seamanship requires some one else beside the wheelsman to to be on deck; under the circumstances, if the barge had put her helm aport when the Worth struck, there would have been no difficulty of shearing clear of her. In coming over the flats it is a common thing for one vessel to ground and the other to sheer clear of her. After we got to Detroit with the Telegraph, Mr. Saunders stopped us to inspect the boiler of the Eagle. It was inspected that day and found all right.

Cross-examined.

By Mr. Moore:

I cannot say where we picked up the Worth; it was sometime in the forenoon; we picked up the Worth first. I am not certain how we picked up the tow; we connected the tow at the Western railway on the American side. The order of the tow was the Telegraph, the General Worth, and the Franklin Moore. When we started off they were lying with their bows up stream; the barge was lying just below Black river. We left the dock at Port Huron somewhere near 10 o'clock; we came down the river about 4 or 5 mile an hour beside
78 the current. The current there averages 2 miles an hour; we were at Newport about an hour and ½. For a full wooding it takes about 4 hours; we can carry forty cords; we put on that day, altogether about 2 cords at Newport and 12 cords at Baby's Point. We left Baby's point about ½ past six; went over the flats about 9 o'clock; no difficulty on the flats; there was no moon; I turned in at 9 when we got over the flats. The usual course to Detroit river after getting over the flats is S. W. by S. I went to sleep after going below; captain called me at 12; the heading of the vessel was S. W. by S. then, just as she was when I left; we kept her on that course about ½ an hour; then kept her S.W. for the river; kept her on that course about 15 minutes, then changed to W.S.W.; did not shift her course again until the Worth grounded. In my watch Thomas Evans was at the wheel; I had no one else at my end of the boat; the 2nd engineer had the engine. I don't remember the fireman's name; our crew consisted of 11 men I think—2 wheelmen, 2 firemen, 2 engineers, captain and mate, cook, that was all. When I came on deck I found the captain forward of the pilot house on the main deck. We were on the

usual course at that time; we hit the reef about N.W. from the island, about 400 hundred feet from the mainland of the island; the channel course within about 300 feet of wind mill point; 12 foot channel; the captain went to his room when I took the deck.

79 I went forward of the pilot house and remained there all the time; I could see the main land on the American side, it was off about 2 miles. it was a dark night, no moon and no stars in sight; it was so all my watch and was so before I left the deck before 9; we thought it was going to rain, it was very dark. My wages were $55, by the month. I did not see the captain drink any beer that day, don't know of his drinking any beer that day; I did not hear any of our crew say anything about captain's drinking anything that day. I saw Captain Fraser after the collision; Captain Cottrell and I went down in the cabin and looked at the damage done.

Question. If the tug was on her course when you left the deck at 9 o'clock, and was on it when you came on deck again, and you kept her on her course, how did you happen to get on that reef?

Answer. By not shifting her coarse quick enough it carried us on the reef, our heading then, when we stuck was W.S.W.

The Worth was steering wild during the evening she would not follow the Telegraph, she would sheer out frequently 40 feet one way or the other; I don't know why they did not put bits on her; she steered well enough in the day time; our pilot house top above the main deck is about 10 feet; I kept my position in front of the pilot house and looked out all the time; she sheered out 30 or 40 feet

80 several times; can't say how often; if she had kept in line of tow I don't think she would have stuck on the reef.

Question. When the tug lay alongside of the Worth a while she was aground, did you tell Captain Fraser that when you came on deck that the tug was a good ways off her course to the eastward?

Answer. No, sir; I did not.

Question. Did you tell him that the tug was where she ought not to have been?

Answer. No, sir.

Question. Did you tell him that you put her her heading one point more to starboard in order to clear the reef than you would have done if she had been on her course when you took the deck or that in substance?

Answer. No, sir; I don't think I told him that. I am going on a new tug this season in Mr. Kean's employ as 1st mate.

If the officers of a boat are attending to their duty a vessel can invariably sheer clear with a line of 75 or 80 feet.

After an order is given a steering vessel will commence swinging to her helm in 15 seconds—in that time as we were going that night we would run about 25 feet. From Baby's Point to Peach Island is about 35 miles.

81 *Cross-examined.*

By Mr. Holbrook:

The collision occurred near 1 o'clock, not quite 1; we passed through the flats at the rate of 5 miles in the current, and 3½ in still water. From the flats to Peach Island is about 20 miles; we run faster in the currant than in the lake; it was dark that night; I could see the vessels in tow.

The length of line from the barge to the General Worth was from 75 to 80 feet, that line had been the same from Pt. Huron. It would take a vessel, minding her wheel well, about 15 seconds to commence swinging off; it would take her 15 seconds more to swing clear of the of the Worth; I dont know how the man at the wheel on the barge would have known that the Worth was aground if he had not been told of it; a look-out could have known, he could have known from the line slacking and parting and from the hollowing port that she was aground.

Re-direct.

By Mr. Moore:

I staid right forward all the time; I had no other look-out with me.

Re-direct.

By Mr. Newberry:

In stating the time by seconds that it would take a vessel to answer her helm, I speak from my judgment and not from ever having
82 timed her. I still think the barge Franklin Moore would sheer in running the length of her line.

Question. You stated to Mr. Moore that you grounded N.W. of the island, but at the same time pointed on the map N.E. of the island, which did you mean?

Answer. I meant off the N.W. part of the Island.

(Witness marks with a black pencil a cross on the map at the place where he thinks they grounded.)

The map is an enlarged map of Wayne county and is considered in evidence.

CHARLES EVANS.

John Myers sworn:

I have sailed one season last season; 1st season I was on the Eagle; 2 months and ½ on the Dispatch and the Kate Moffit; I was wheeling on both of them; I was at the wheel at Pt. Huron when the tow was put together; the captain was on deck, and the mate was aft; I was in the wheel house and did not see the line given to the Worth; I did hear any orders given to the Moore in regard to holding on to the line; did not hear any one say hold on to that line, what in hell are you doing, or anything of the kind; I was on deck when the boat was at Newport; we put on some wood there then went on as
83 soon as the captain of the Worth was ready; we got to Baby's

Point about 5 o'clock, we put on wood there; I helped the men that usually put on wood; put it on there; it took about an hour and ½; we did not delay there but started right off, I steered from there down; we picked up the captain of the Telegraph down at the head of Herson's island; we did not have to wait for him; I staid at the wheel until 12 o'clock; captain had charge of the deck until 12 o'clock; after leaving the flats we steered S. W. by S; we steered steadily; Thomas Evans took the wheel from me; I turned in; S.W. by S. is the usual course from the flats; I got up right after the collision, captain called me; I was up before we got back to the Worth, captain was also up before that; captain was not drunk or under the influence of liquor any time that day that I knew of; I never saw him so at any time; I never saw him drink any liquor; there was none carried on the boat that I knew of.

Question. While the tug was along side of the Worth did you ever tell anyone that the mate was asleep and the captain drunk at the time the Worth grounded, or after or anything to that effect.

Answer. No, sir; I never told any such thing; I never heard any one on the Eagle or any such thing.

84 *Cross-examined*

By Mr. Moore:

I am 20 past; was 20 on the 8th of last June; I live in Sombra, Canada, opposite Newport; I have been at home during the winter; all winter right on the river; I went on the tug Eagle, the first of Jand, I think; I had been on the Dispatch before that; I got $35 a month on the Eagle all the time; the agreement was that if I staid on her all the season I was to get $35 a month, and if I stopped before that I was to have only $30; I remained on her as long as she run; she laid up before the season closed and then came out again; I was not on her when she came out again; I got about $75 or $80, for my services while I was on the tug; I left her sometime after the collision; it was more than one week after, can't say for certain how long after; captain Cottrell left the same time I did; I can't say how long she was laid up, I have no idea, after she was laid up on Friday; I next saw Captain Kean the next Wednesday; Mr Kean paid me; the clerk of the store in Newport gave me my account; by account I mean the remainder that was coming to me from the boat; I don't know how much I had received before that; had no difficulty with Captain Kean when we settled; no talk about this collision; he did not say he would want me for a witness; I did tell him where I lived then; saw him several times after that, but can't say where that was during
85 the season of navigation; I did not see him during the winter until I came here this spring; that was a week ago last Monday; I have never talked with Captain Kean about this collision, he never asked me what I knew about it; never told anybody I knew anything about it; I told several that I knew how it happened but don't remember now who they were; I never told any one how it did happen; I don't know as I can tell now how it happened.

I don't know where the Worth and Telegraph were picked up when they were taken in tow; it was in the forenoon; the tug lay the night before at the Grand Trunk dock, I think; don't know when she started out in the morning; can't say when we left Port Huron with the tow; it was my watch coming over the flats; we left Baby's Point just after dusk a little; I was the pilot across the flats; no difficulty in crossing the flats; we could see pretty well; after crossing the flats the course was S.W. by S., and kept that until I left the watch. I knew the points of the compass; no one in the pilot-house beside myself; don't remember seeing the captain in there; no one that I saw forward on deck after we left the flats, except the captain and myself.

Question. Running S.W. by S., porting 2 points and ½, what then would be your heading?

Answer. Southwest.

86 Question. Running S.W. by S., starboard 1 point and ½, what would be your heading then?

Answer. S. by W. ½ W.

Question. On a course S. W. by S., if you change your heading, under an order to port 1 point and ½, what would then be your heading?

Answer. I know it well enough, but can't get it through my head.

Question. On a course S.W. by S., under an order to port, changing the heading one point, what then would be the heading?

Answer. S.W.

I learned to box the compass last summer. I turned in at 12 o'clock; I came on deck right after the collision; the tug had just let go of the Telegraph, and was going back to the Worth; I went aboard of the Worth; I don't know that I saw Francis Owen there; I don't know the man; I know John Doherty; he came on the tug when we were running down; I think I saw him on the Worth, but won't be certain; I did not converse with him on the Worth, or while the tug was lying alongside of the Worth.

Re-direct.

By Mr. Newberry:

Question. Mr. Moore has asked you several questions about compass courses when changing your heading—are your orders on

87 shipboard ever given you in these kind of expressions?

Answer. Not to my recollection.

This 75 or $80 included goods as well as money. I started to go to the pinery last winter, but did not go.

JOHN MEYERS.

Captain Charles D. Cottrell sworn.—I am 43 years old; have sailed 22 years—as an officer, 14 years—as a master, 6 or 7 seasons; on the lakes all the time; I have been an officer on a tug-boat last season only, exept in Saginaw river; I was on the Eagle about 4 months; I remember the collision; there were 9 men on the Eagle, all told;

it was a full crew; Charles Evans was mate; he was a competent man; we had 2 wheelsmen—both competent men; they steered, both of them; they were good wheelsmen, both of them.

Question. What are your habits, with regard to drinking?

Answer. I don't call myself a drinking man; I do, once in a while, take a glass of liquor, although I have not done so lately. I might have taken a glass of beer that day, at Newport; but not more than that, if I had that; that was while coming down the river; the day before I took these vessels in tow I had not drank anything; I remember getting drunk, when I was quite a boy—18 years old—that of the last time. I did not carry any liquor on my boat, or even
88 beer. We got the tow together at Port Huron about 10 o'clock, or later; I took the barge down where the vessels were; I was standing on the pilot-house when I got to the vessels; the mate was aft at the time; the mate threw the line to the Worth, as we passed by; I merely checked up to slack up the line, and then went along; I gave no orders to the barge about the line—the mate might have done so, and I not know it; I did not hear him; he was standing about 50 or 60 feet from me; I could see him; he could not have given an order that they could have heard on the barge and I not heard it; we went on down the river, and stopped first at Newport; the captain of the Worth asked me where I was going to stop to wood, and I told him Newport; he said that would just suit him, as he wanted to stop there; and the captain of the Telegraph told me he wanted to stop a little below; we stopped at Newport an hour, or little over; I went with the captain of the Worth a little ways to show him where Mr. Lester lived; we left as soon as the wood was on; we put on between 2 and 3 cords of wood; we next stopped at Baby's Point; we put on there from 12 to 18 cords; we were there about 2 hours; we went on as soon as the wood was on board; did not delay there; we did not wait for the captain of the Telegraph; I had charge of the tug going down from there;
89 the mate was with me on deck until we crossed the flats, and also the wheelsman; after we passed the flats we steered S.W. by S.—the usual course; John Myers steered my vessel until I left the deck; during my watch I am on deck forward of the pilot-house; my vessel was well steered, she was kept on her course; the vessels I did not notice, particularly, the barge steered out some; I left the deck a few minutes after 12; the weather then was a clear, dark night, but could see the light-house at the head of the river, then; my vessel was then in the usual course; Mr. Evans, the mate, then took the watch; when I gave up the vessel I told him the course I was steering, that there was the light, and he must govern himself by that, of course; I then turned in; the mate called me ot the head of Detroit river; we were then going back for the Worth, who was aground; she was on a point of Peach Island, about 300 feet from dry land, near to the place where the mate marked the cross; when we got back to the Worth I did not know certain that there was water enough to go alongside; it was dark—I could not see; I did not pull her off that night, because I wanted to pull the

right way, and had no boat make the soundings; when I got up to the Worth I was not at all under the influence of liquor; coming across Lake St. Clair we ran about 5 miles an hour; a competent
90 watch on deck for a barge in tow is a look-out and a man at the wheel—good seamanship requires a look-out as well as a man at the wheel.

Question. Would a barge like the Frank Moore, while in tow, with no one on deck but a boy 17 years old, shipped as cook and sailor, be sufficiently manned?

Answer. She would not.

Question. Suppose, under the circumstances of this tow, the Worth strikes the ground and ranges along after striking a ½ or her whole length, and the officer of the Worth, when she first strikes, passes the order to the barge to part—if that was obeyed, would there be any difficulty in the barge clearing the Worth?

Answer. There would not—it is done every day.

Question. Is it not an ordinary circumstance where one vessel in tow grounds that the vessels behind her, by putting the helm aport, or starboard, as the case may require, sheer clear of the vessel aground, and pass her without injury?

Answer. It is done very often.

The captain of the Worth waited to see Mr. Lester about giving out a job for rebuilding his vessel; when we arrived in Detroit the boiler inspector would not let me proceed; the boiler were tested, and found all right. After the collision, the captain of the Worth said his vessel was not leaking much—that he had tried his
91 pumps; I do not remember that he compared it with his condition before the collision.

Cross-examined.

By Mr. Moore:

I went aboard the Eagle last year, some time in June, and left her I think in October, before the season closed; I run her a month or more after the collision.

I live in Cottrelville, St. Clair county; I think John Myers came aboard the Eagle shortly after I did, but don't remember exactly; I think he got $1 a-day; he might have got a little less, at first—perhaps $20 or $25 a-month, at first; Thomas Evans got the same wages as Myers, I think, but I cannot tell exactly; Charles Evans got $50 a-month; I had never sailed any tug on this river until I sailed the Eagle; 12 years ago I was sailing-master on the tug Frank Moore; I sailed the Undine on the Saginaw river 7 or 8 years ago; since then I have been mate and pilot on the boats from Saginaw to Detroit, and sailed the old propeller, Detroit, two seasons; I picked up the vessels at 8 or after; it was foggy that morning; the night before we lay most of the night at railroad dock, at Port Huron; after giving the line to the Worth, we swung around and came down the river; it was about 10 o'clock when we left Port Huron; when we came alongside of the barge and brought her down to the Worth;

92 there was a little delay about our engine—something the matter of it; I went in to see about it; the engineer was in the engine-room, there might have been some others of the crew. Lester's ship-yard was on Belle river, ½ or ¾ of a mile from where we lay; McDowell's is right on the dock, or was then; I went part of the way to Lester's house with Captain Fraser; I did not delay for Captain Fraser any; we got across the flats between 8 and 9 o'clock; it was just dark when we left the wood dock, at Baby's Point; no difficulty going over the flats; we could see the lights; it did not rain; there was no fog, but a kind of mist; we cross the flats whenever we can see the lights; from Baby's Point over the flats it is about 15 miles; from outside the flats to Peach Island I call it 25 miles—some call it only 20 miles.

The Eagle will tow 4 vessels up stream, when she is in condition, if they are light vessels, 3 and ½ to 4 miles an hour, by the land; she will tow 4 loaded vessels with the current across the flats about 5 miles an hour; with the tow we had that time, we were about 2 hours running from Baby's Point until we got over the flats; we would run faster in the current crossing the flats than we would after getting out into the lake; if there is nothing in the way, we never check in crossing the flats—keep up a full head of steam; if it blows a little, we use more steam; from the time we crossed the flats until I left the deck, I was on deck all the time, walking around; I always
93 look into the pilot-house when I am on watch, but don't remember about that night particularly; I did not wake up until I was called that night; I was tired and a little unwell that night.

When I left the deck the Detroit river light was 6 or 7 miles off; it bore about S. W., ½ W., or S. W. by W.; I could see the land, but not very plain; I thought it was Gross Point; it bore about west, or N. of west from us, and about 2 or three miles off, if we were on the usual course, and I think we were; coming across the lake that night we met vessels outside of us; we met them shortly before 12, and near Gross Point; don't know what vessels they were; they were in tow—think I met two tows; don't remember meeting any sail vessels. In running 5 miles an hour, I can't tell how long it would take a vessel to run 75 or 80 feet—a person would have to figure on that; I am not very good at figures; I can't make an estimate without figuring, yet I think the barge could have sheered clear of the Worth, without any difficulty; when I came back to the Worth I think the captain told me the depth of water about his vessel; we carried no yawl-boat; our tug drew about 8 feet of water; when I picked up the tow I said nothing about how the vessels should be placed in the tow.

Examined.

By Mr. Holbrook:

By the time a man could put the wheel ½ over, a good steer-
94 ing vessel would begin to sheer—she would sheer off 10 feet in a minute or less; I don't think the length of line would

make any difference with her sheering; she could sheer as easily with a line of 75 feet as with one 150 feet, and full as quick, I think; she could run 100 feet and sheer off 10 feet inside of a minute; the length of the line between the Telegraph and the Worth I am unable to tell; a look-out on the barge could not tell that the Worth was ashore if he could not see the line slack; the speed of the barge would not be but very little little less in running 70 or 80 feet after the line slacked; the Telegraph might have gone over and the Worth not, if they were on a swing at the time; I don't know whether they were swinging or not, they might have been, and the current caught her and carried her on; if the Worth was on a swing, the barge might have been on a swing, too.

Question. If the tug had kept her course, would the vessels have been on a swing?

Answer. They might have sheered.

Question. If the tug had kept her course, could all the vessels got on a swing to port?

Answer. The could.

Question. Why?

Answer. If they had not been properly steered.

Question. If they had been properly steered?

95 Answer. They might have swung then—some vessels will swing.

Question. Unless the speed of the tug had been slacked, or her course changed under an order to port, would all the vessels in the tow have been likely to have been on a swing to port when the Worth grounded?

Answer. I don't know as they would be more likely to swing to port than they would to starboard.

Re-cross.

By Mr. Moore:

Question. If a vessel in a tow fetches up, will a vessel astern of her, with a line 75 to 80 feet long, be as likely to sheer clear as with a line 150 or 200 feet long?

Answer. She would sheer as quick.

The same question repeated.

I think she would.

Re-direct.

By Mr. Newberry:

I have been on steamers and sail vessels betweet Pt. Huron and Detroit running this pass, off and on, for 23 years; I have been 10 or 12 years on steamers running through the river to Port Huron or Saginaw; I made one trip on the Forest Queen this season, as mate; I can see the compass on the Eagle without going into the pilot-house.

C. D. COTTRELL.

96 Thomas Evans sworn:

I have sailed 2 seasons—1st on the tug Blish, I was wheelsman on her; then on the scow Spray; then on the Sarnia, a ferry at Port Huron, as wheelsman; then on the propeller Antelope; then on the schooner Lizzie; then on the tug Eagle—I was on her 4 months, Mr. Cottrell hired me. I was on deck when the tug started from Pt. Huron this time; I was with the mate at the line aft; I was there when the line of the barge was given to the Worth; no order was given from the tug to the barge at the time the line was given; I was on deck till the tow started down the river; we stopped at Newport and put on some wood; when the captain of the Worth was ready we went along; we next stopped at Baby's Point; we wooded there, we put on about 12 cords; we went right on when the wood was on; I went to bed at 6 o'clock, and was called at 12 o'clock; I then took the wheel; the mate had charge of the deck; I staid at the wheel 6 hours; the mate was on watch forward all the time I was at the wheel; the tug was on the course S.W. by S. when I took the wheel; in about ½ an hour she was hauled up a little towards the river; I guess that was to the south; I am not certain we
97 hauled up into the channel; the light-house was in sight when I came on deck; I am not certain when we hauled up, whether it was towards the light or from it; the first I knew of an accident was when the tow-line broke; the mate was then forward of the pilot-house; we rounded to with the Telegraph, and she anchored; the tug went back to the Worth; I saw our captain at Newport, at Baby's Point, and at the Worth; he did not appear to be under the influence of liquor at all; I never saw him so at all; no liquor was carried on the boat that I knew of; never saw the captain drink any liquor; while the tug lay alongside the Worth, after the accident, I did not hear Myers, or any one else, say that the captain was drunk, and the mate asleep.

Cross-examined.

By Mr. Moore:

Sailed 2 seasons; had been on the Eagle 4 months. Am 17 years old; think I was now in 1848. I was getting $25 a month at first, and $35 afterwards; the last 2 months I got $35; they were October and November. I can't think of the names of the firemen on our boat; Dennis was the name of one. I live at Port Huron. I turned in at 6; the wood was not on then; the boat left shortly after I turned in; it might have been 25 minutes after; it was about dark. Captain called me at 12 o'clock; the mate took the deck then; he was
98 not in the pilot house. Had no talk with him, only he told me how to steer. He was about 12 feet from me; he was there all the time standing up, leaning against the sampson post; he staid there all the time; I was about two feet above him. He did not come back to the pilot house at all after I came on deck. He asked me how she was heading, and I told him; he asked me so 4 or 5 times. I told him each time she was heading S.W. by S.; told him so every time up to the time the Worth grounded. That is the usual course. I

steadied her by the compass and the sparks of the boat which were behind us. The wind, I think, was from the S. E.; I am pretty sure it was; it blew a light breeze; no difficulty in keeping her on her course. We were on her course when the Worth brought up; had not varied it after I took the wheel. I had been down there before in the night as wheelsman—a good many times before. We came down this time in the usual channel and usual course. When I took the wheel I could not see the shore of Lake St. Clair; could see the Detroit light; it bore about on our starboard quarter, I think; I could not tell exactly what direction that was. I could not see Gross Point. We were about 5 miles from the light when I took the wheel; I can't tell how long we run before I saw Grosse Point.

99 I did not notice whether I could see it when the Worth brought up; I could see Peach Island then. I knew the points of the compass; can box the compass: S. ½ W.; S. and by W.; S. by W. ½ W., W. ½ S.; W. by S.; W. by S. ½ S.; S.S.W.; W. ½ N. W. by N.; W. by N. ½ N.; N. ½ W.; N. by W.; N. by W. ½ W.; N. N. W.; N. ½ E.; N. by E.; N. by E. ½ E.; E. ½ N.; E. by N.; E. by N. ½ N.; N.N. E.; E. ½ S.; E. by S.; E. by S. ½ S.; S. ½ E.; S. by E.; S. by E. ½ E.; S. S. E.; E. Never counted the [the] points; never counted the ½ points either. Learned to box the compass summer before last; Captain Bedford learned me; my brother, the mate, also instructed me. I did not see the Dispatch that night, or the Canada either, that I remember of. I don't think any one from the Canada hailed us and said the Worth was aground; I don't remember meeting her. While I 'was at the wheel I don't remember meeting any vessels. Don't remember meeting a small scow. I went aboard of the Worth after the tug came back; I was on board of her about 5 minutes. Nothing was said as to how the Worth got aground; I never brought up on that point before. The barge was about 6 or 8 rods from us; could not see her plain. I never looked to see if I could see her.

Examined.

By Mr. Holbrook:

100 It was a rather dark night; no fog, mist, or haze; no rain, no moon; wind blowing. We were sailing 4 or 5 miles an hour. We did not run faster through the lake than through the flats; perhaps a little faster through the flats than the lake. The line was kept the same length from the time it was hitched to the tug until it was hitched to the Worth, and not changed until after the collision. When the tug hitched on to the barge first, the captain said he would give the line to the Worth; the mate threw the line from the tug on to the Worth. I did not hear the captain of the tug tell the captain of the barge to stop paying out the line. I did not hear the mate say anything to the captain of the barge about the line.

Re-cross.

By Mr. Moore:

After the tug came up with the barge, I do not recollect seeing the captain go into the engine-room. The engine was out of order, and we stopped a couple of hours at the ferry-dock, at Port Huron. That was after they brought the barge up, and after they gave the line to the Worth. The tug was laid up, before navigation closed, at Newport. I don't know why she was lid up. My brother and I went on her again after she started out.

I received $83 dollars when she laid up the last time, but
101 that was not all I received. I went on her first the 4th of August; she laid up about the 1st of December. I had received about $10 before receiving the $85.

THOMAS EVANS.

David McDole sworn:

I am 36 years old, and reside at Newport. I am a ship builder; have been for 20 years; I operate a ship-yard. I know Captain Fraser. He came to see me about rebuilding the Worth several times during the summer. I have seen the Worth; she is 15 or 16 years old. Captain Fraser said that he wanted her rebuilt; that she would not class sufficient to carry grain; that he wanted her to carry grain. He did not say anything about her condition. I saw her in the dry-dock at Campbell's after the accident, and looked through her a little. I went into her, and into her cabin where the break was. I noticed her transom; it was broken or cracked in the wake of the stern post. I can't say whether it was an old break or not; it looked like an old one, but might have been a new one. I think the break from the accident had not extended in as far as this transom; at least I did not see any sign of it. Her stern was all torn out.

I can't say how her beams were. I did not see what work was
102 put on to her. She wanted a new stern, deck, taffrail rail, beams, and after part of her cabin—the lower cabin. If she was to be rebuilt next winter, all this work could be used in the rebuilding, if they intended to tear that part of the works out of her.

Cross-examined.

By Mr. Moore:

I think I saw Captain Frazer twice in Newport, and once in Detroit. When I saw the Worth the stern was all out of her and the after cabin. The main transom was cracked right in the wake of the stern post, but I could not tell whether it was an old crack or a new one. I did not examine the other transoms; don't know whether they were in or out. I don't know exactly what was broken. She had a pretty heavy blow. The after sill of the upper cabin was broken.

Re-direct.

By Mr. Newberry:

Captain Frazer said in talking with me that he would lay his boat up early, so I could have a good chance to rebuild her. Did not say anything about not liking to be out in heavy weather.

DAVID McDOLE.

103 Thomas Creig sworn :

I am 29 years old. I am an engineer, and have been 15 years. I was on the Eagle at the time of the accident; I had been on her about a week. I remember the time the tug picked up the tow at Port Huron; it was in the morning after breakfast. We had to stop on account of the engine for 15 or 20 minutes that morning. We had to fix the key of the crank-pin; we keyed it up. That was before we brought the barge down to the Worth. I was on duty when the barge was brought down to the Worth; it was my watch. The second engineer was working the engine. I was standing outside, and the mate was 12 or 14 feet from me. The second engineer usually works the engine on boats that I am on, when we are picking up a tow. It is usual when they are picking up a tow, and it is near the time for changing the watch for both engineers to give attention to it, so that if the engine gets on the centre one of them can stand by the engine, and the other throw it off. I did not hear any one on the tug say to the barge to hold on to that line, "what the hell you are doing," or anything of that kind. No such order could have been given and been heard on the barge, without my hearing it. After the line was thrown to the Worth, the tug, as near as I can remember, went up to the head of the tow. The tug stopped at Newport, I think. We took some tallow for the engine; don't remember about the wood. We stopped at Baby's Point for
104 wood. After wooding at Baby's Point, I rather think we did not stop; am not positive. I turned in at 1 o'clock, perhaps 15 minutes after. I slept forward, close to the pilot-house. I think I fell asleep before the accident. I heard the boat coming round, and it woke me up. I heard the mate say he had lost one of his vessels and the barge, and he was going back after them. I got up after they had got along side of the Worth. I saw Captain Cattrell after I got up. He was not under the influence of liquor any time that day, or night either. I talked with him several times after getting along side. I never saw him under the influence of liquor while sailing the Eagle, and could not say that I ever saw him so while the tug was lying along side the Worth. I did not hear a word said in any way about the mate being asleep and the captain drunk; nothing said about it the next day.

Cross-examined.

By Mr. Moore:

I am on the propeller Iron City, one of Captain Kean's boats; have been in his employ 5 or 6 years. I am in his employ some of the time during the winter. The 2d engineer was a man from New-

port, called Wright. It was about 9 o'clock when we started from Port Huron. My watch is from breakfast till dinner, and from supper till 10 o'clock. We breakfast about 7 o'clock. We
105 have no regular hours for being at the engine; we are governed by the time we get our meals. We change at 10 o'clock at night. It is left in the discretion of the 1st engineer whether he will let the 2nd engineer sleep until 1 or call him at 12. What I have stated is the usual custom on steam vessels as to hours. I was in the captain's watch. The entire watch is controlled by the same custom on tugs. On passenger boats the regulation for the men is different, but not for the officers. We left the dock at Port Huron, where we lay over night, at about 12 or 1 in the morning. Don't remember where we picked up the Worth and the Telegraph. At breakfast time in the morning, I think we lay at the dock at Port Huron. Then it was my trick at the engine until dinner time. It requires considerable attention on the part of the engineer in picking up a tow. The best place to stand to throw the engine off would be right down under the engine. The 1st engineer stands out on deck until the engine gets on the centre; then the 2nd engineer notifies him, and then the 2d engineer pops down and throws it off.

Question. If you should leave the engine during your trick in the charge of the 2d engineer, in order to throw it off when it got on the centre, could you get it off, when it got on a centre, as quick
106 as though you had staid at the engine and sent the second engineer below to be ready to throw it off?

Answer. If the 1st engineer's only duty aboard of a tug boat while picking up a tow, was to throw the engine off the centre when she got on, his proper place would be to stand below with a bar in his hand; but as he has more important duties on deck to look after, he is seldom if ever down below until after the engine gets on.

(Same question repeated.)

Answer. No; if I should stay at the engine, and send the 2nd engineer below to throw it off, he would throw it off quicker then, as though I had been out on deck and left him at the engine.

Question. What more important business have you than attending to your engine when you are picking up a tow?

Answer. One man is sufficient to attend to the engine under ordinary circumstances, and it requires all his attention to do so. The other man stands generally outside the engine-room, and lets him know when the captain is going to stop and pick up a line, so that he can let the steam get down; then lets him know when they are ready to start, so he can leave the dampers open and get up steam again preparatory to starting.

107 Question. If it is the duty of one engineer to stand at his engine during his trick, and the other to stand outside on deck to communicate between the captain and engineer, how do tugs get along with two engineers?

Answer. I don't know of any tugs that do that way; that is, that leave one engineer to stand outside all the time and communicate with the captain, but only where they are picking up a tow.

Question. Do not tugs and steamboats generally have bells, by which the officer of the deck conveys all necessary orders to the engineer on duty?

Answer. For working the engine? Yes, sir.

Question. Has the engineer any duty to perform except to keep the engine in order and working it?

Answer. Yes, sir; he has to see that the boat is properly fired; a proper amount of water kept in the boiler; look around the machinery, once an hour or so, to see that there is no danger of anything catching fire; ascertain when the boat is going to stop, so he can tell how much fire to have in.

Question. Is not all that, together with seeing wood prepared for it, a part of keeping the engine in order and working it?

108 Answer. It is part of the engineer's duty, but not the part of taking care of the engine.

Question. Has the engineer any duty to perform in regard to the navigation of the vessel, except in connection with the working of the engine?

Answer. Not much else of any consequence.

Question. With the master and mate on deck, and the tug performing the difficult duty of picking up a tow, is it not ordinarily the duty of a 1st engineer on duty to remain at the engine during his trick?

Answer. Yes.

Question. What important business had you that morning that called you away from the engine?

Answer. I had only been a few days on the boat, and was going to remain until they got a permanent engine to be there. I was not accustomed to that engine for a year or two; it is a difficult engine to work. A man not accustomed to her is apt to get her on the center. The 2nd engineer was on her some time. I think he could handle the engine better at that time than I could; so I had him work the engine, and I staid outside on deck. I pursue the same rule on nearly every tug boat that I can conveniently. After leaving the flats I don't remember seeing any vessels, although we may have passed them. I was out on deck 15 or 20 minutes. I was forward by the pilot-house during the

109 evening while running the engine. I usually go forward 4 or 5 times during a watch, and did that night. I was talking to the captain several times that night, and the calculation was to have me stop off at Detroit and get another engineer. I was forward and think the captain was aft once or twice, but can't be positive. The engine of the Eagle is bolted to the bottom of the boat, and the engineer stands on the main deck. It is about 27 feet from the stern post to the door where you step into the engine room; from the lever of the engine to the outside of the door, is about 4 or 5 feet; when she is going ahead and when backing, it is only 3 or 4 inches. I should think the tug was 125 or 130 feet long. The captain was on the main deck forward, when I spoke to him coming across the lake. I talked with him considerable that night. I have seen the captain

take a glass of ale, and think I saw him drink some whiskey on St. Clair river once at a bee where they were moving a neighbor's house; have seen him drink whiskey 4 or 5 times altogether; don't think I ever saw him drink more than a glass at about the same time. Did not see him drink any ale at Newport or Baby's Point that day. I was not with him all the time; he might have taken a glass without my knowing it. The wind was not high; think it was a
110 still night; there was a light haze, but not foggy; it was a pretty fair night to see; it was a nice night; can't say whether there was a moon. We crossed the flats about 4 miles an hour all the way. I can't say when we left Baby's Point, or whether I was on watch or not; don't know whether I was working the engine then. Wright worked the engine until after dinner. I think we got dinner when at Newport, but am not certain. If the collision had not occurred the trip would not have differed from others, but that served to fix things on my mind. I talked a little with Captain Kean this morning. He said they swore the captain was drunk, and asked if such was the case; that was all he stated to me. When I talked with the captain he was forward most of the time; but I think he came aft once or twice. Don't know who was at the wheel. I think the captain left the deck first, but can't be positive; the 1st mate was on deck before I went below.

Ex. by Mr. Holbrook:

Can't say when we left Baby's Point. I was on watch when we passed the light house; when I turned in the tug was perhaps 12 miles from the mouth of the river. I don't know certain; she
111 could not have been far from where the collision occurred. The first I knew of the collision was about ½ past 2 in the morning; did not look at my watch. Don't recollect distinctly about the time we crossed the flats or left Baby's Point. I was standing between the captain of the tug and the captain of the barge, and don't see how he could have said anything to the captain of the barge and I not heard it. The captain was on the pilot-house when the barge was being brought down to the tow. When the tow was swinging round to come down, I was on deck, and was the length of the vessels and the lines from the barge; the barge was the last in the tow. I am not positive whether she was lashed to the side or astern, but think she was astern. The mate threw the line to the Worth; he most always does; sometimes the wheelsman does. I can't say whether the barge passed up by the Worth after the line was thrown to the Worth or not. I was on the port side of the boat until the tow swung around. Don't think I went in the engine room; there is not room for 2 men to stand conveniently, unless one goes to the window in the engine room. Mate and I were not together most of the time; the mate was aft. I don't recollect now where I was all
112 the time distinctly; I do say I was on deck while picking up to tow, and until they swung around. After the line was passed out I did not notice where the mate went particularly. I did not notice the names of the vessels until the Worth was struck.

I don't recollect how they were picked up or when. 1st, there was a vessel, then the Worth, and then a barge. I don't recollect anything about the vessels until we came along with the barge and hitched on.

THOMAS CRAIG.

Capt. John L. Whipple sworn:

Have sailed 25 years; alwas as master. I know Charles Evans, mate of the Eagle last year; have known him 6 or 7 years; he has sailed with me and for me. I always considered him pretty good. I think I have left him in charge of my own tug.

No. 1 question. Is it not the duty of a barge like the Frank Moore, in tow in the night, to have on deck a competent wheelsman, and also an officer or lookout?

(There are expert witnesses present, who are requested to leave the room by the proctors for libellant, and for the co-respondent, Frank Moore, by the name of Captain Dennis Swartout and Captain Gilbert Travis; and the proctor for respondent directs them to remain in the room.)

113 Answer. I think they should have a man on the lookout beside the wheelsman.

No. 2 question. Is a boy 17 years old, shipped as part cook and part sailor, competent to act as wheelsman and lookout, and have sole charge of the deck of a barge like the Frank Moore, when in tow at night?

Answer. I have no objection to his age; but a man can't act as wheelsman and lookout at the same time.

No. 3 question. Suppose a barge, like the Frank Moore, with a tow line from 75 to 100 feet, the 3d vessel in a tow coming across Lake St. Clair, from 4 to 5 miles an hour, and the 2d vessel in the tow strikes bottom and ranges ahead ½ her length or more before she fetches up, and the officer of the 2d vessel, as soon as she strikes, passes the order to the barge to port, will there be any difficulty in the barge sheering clear and passing the vessel aground, without injury, if the order to port is immediately obeyed on the barge?

Answer. I should think not, if it was immediately obeyed; although that is a very short tow line.

No. 4 question. Suppose from the fact that there is no one on the barge forward to pass the order to port, the wheelsman of the barge does not understand the order and does not alter his helm at all, and the barge strikes the vessel aground on the stern post, would

114 you not consider it great carelessness in the management on the barge?

Answer. It would be great neglect and carelessness not having a man there to pass the order.

Cross-examined.

By Mr. Moore:

I have always owned or been part owner of what I have sailed. Charles Evans was with me 2 or 3 different times, always as mate.

Question. Do you call Charles Evans an intelligent seaman?

Answer. I should think about the average. I think a line 75 or 80 feet long is a very short line for a tow line.

Question. If you had directed the line of a vessel in a tow of your tug to be made fast at that length, and the vessel ahead of her should fetch up, and the one at the end should run into her, would you consider yourself guilty of any negligence?

Answer. I should consider that I gave the wrong order.

Question. In vessels in a tow in the night time, one of the vessels rakes, but does not fetch up, has an officer on the vessel astern of her any means of knowing it?

115 Answer. He has none, unless the line slacks; the usual length of a tow line between vessels is about 200 feet, and between the tug and the vessel a little more than that. I have towed over the flats with a line 75 or 80 feet, but very seldom. I have no recollection of running through from Pt. Huron to Detroit with a vessel in tow and a line only of 75 or 80 feet long, although we often tow with too short a line.

Question. With a line of that length and a vessel fetches up, will the vessel astern be as likely to sheer clear as she would with a line of the ordinary length of 200 feet?

Answer. No, sir; the reason would be that it generally takes a little time to understand the order, but if a man stands ready to obey the order there is then plenty of time to go clear.

Question. In crossing Lake St. Clair or anywhere in the open lakes, is the same care necessary to a vessel in the tow as when crossing St. Clair flats or any other difficult channel?

Answer. No, sir.

Question. It is an unusual thing for a barge without sails, canvas, or no propelling power, but simply to be floated in tow, to be towed in the open lake, with but one man on deck and that man at the wheel?

Answer. As a general thing vessels in tow when passing through the lakes neglect having a man as lookout.

116 The channel above Peach Island is about the same width as Detroit river here.

Question. If a tow of vessels on a night with a light wind from the S. E. and a good night to see, tug in good condition, got off on to the N. E. point or reef of Peach Island, would not she be out of her usual course, and would not there be some negligence in reference to the officers of the tug?

Answer. If she grounded on the reef she would be out of her usual channel. I should think there would be negligence.

Question. Do you think a man could be a good competent seaman, on a good night to see, with the tug in good condition, the tow following directly after him, could get on to that reef if he was attentive to his business?

Answer. If it was a good night to see I don't think he could, but there are a good many things occur to deceive a man in the night. The course I steer by my compass, which varies a little, from the

flats down is S. W. ½ S. If the wind was S. E. I should head up a little to the eastward to counteract the effect of the wind. If it was a light wind I should not alter my course.

Ex. by Mr. Holbrook:

I don't know the length of the Frank Moore. I think the sharper a vessel is the more time it would take to answer her wheel.

117 This barge consists of the hull of the old Frank Moore. It would depend also on the length of a vessel.

Question. Would the speed of a vessel astern of one aground be much impeded in running half her length?

Answer. It would not.

Question. Have you an idea of the time it would take this barge, running at 6 miles an hour, to sheer 15 feet in running 80 feet after the order to port was given?

Answer. I don't think you could sheer that distance in 10 seconds.

Question. Don't you consider 10 seconds a very short time for a man at the wheel to sheer a vessel off, even 10 feet in running 80 feet, at 6 miles an hour?

Answer. I think she could sheer 10 feet.

Question. What length of time would it ordinarily take to pass an order to a lookout and he to pass it to the wheelsman and the wheelsman to operate the wheel to change the course of a vessel?

Answer. I should think it would take 10 seconds; it takes some men longer than others.

Question. Suppose this vessel was sheering in a contrary direction to the one you wanted her to go, would it not take longer to turn her in the direction you wanted her to go?

Answer. Yes, sir.

J. L. WHIPPLE.

118 Capt. Lewis R. Boynton sworn:

I have sailed 17 years; as master and officer 12 years; 9 years on tug boats on these waters. I know Charles Evans, mate of the Eagle last year; have sailed with him part of 2 seasons; he is a competent mate.

Question No. 1, put to Captain Whipple. Is it not the duty of a barge like the Frank Moore in tow in the night, to have on deck a competent wheelsman and also an officer or lookout?

Answer. Yes, sir.

Question No. 2. Is a boy 17 years old, shipped as part cook and part sailor, competent to act as wheelsman and lookout, and have sole charge of the deck of a barge like the Frank Moore, when in tow at night?

Answer. No, sir.

Question No. 3. Suppose a barge like the Frank Moore, with a tow line from 75 to 100 feet, the 3d vessel in a tow coming across Lake St. Clair, from 4 to 5 miles an hour, and the 2d vessel in the tow strikes bottom and ranges ahead ½ her length or more before she fetches up, and the officer of the 2d vessel, as soon as she strikes,

passes the order to the barge to port, will there be any difficulty in the barge sheering clear and passing the vessel aground, without injury, if the order to port is immediately obeyed on the the barge?

Answer. I should think not.

Question No. 4. Suppose from the fact that there is no one on the barge forward to pass the order to port, the wheelsman of the barge does not understand the order and does not alter his helm at all and the barge strikes the vessel aground on the stern post, would you not consider it great carelessness in the management on the barge?

Answer. Yes, sir; I should think it was in not having a lookout.

Ex. by Mr. Holbrook:

I was master of the Eagle part of last season, and in the Mayflower from 1st of June until she laid up. I sailed the Eagle the year before last. I think the barge could have cleared the Worth because she has a flat bottom and minds the helm very quickly.

Question. What is the difference between her bottom and that of an ordinary steamboat?

Answer. One is flatter bottom than the other. I don't know that she is any flatter than an ordinary steamboat bottom. I think a barge could sheer clear in that distance because she has no bowsprit, while a vessel has one 50 or 60 feet long. I think that is the only reason on that length of line; they would have to turn the wheel immediately on getting the order; the greater the speed the sooner she will mind her helm. I should think it would take 3 or 4 seconds to give the order to the vessel astern and the lookout to pass it to the wheelsman; the length of line would make some difference; the longer the line the longer time for the sound to travel. I cannot tell how fast sound travels. I can't tell any particular vessel that I have seen sheer clear in running 80 feet, although on the flats I have seen vessels run aground, and the one astern steer clear both in the night and daytime. In crossing the flats vessels follow the tug. I can't state any particular time when I have seen a vessel sheer off in running 75 or 80 feet.

Question. Do you mean to swear that you ever knew a vessel astern in a tow to sheer off and pass the next vessel ahead being aground in running the distance of 80 feet, at the rate of 5 miles an hour, the length of her line?

Answer. I have seen vessels very close together sheer clear of one another, but can't tell the exact length of the line. I do not swear whether such line was not a 100 feet long, but it did not look that long.

Question. Whose opinion do you consider best, yours or Captain Whipple's, as an expert?

Answer. I consider myself just as good as he is, and think him a good man. My opinion, as an expert, is as good as any man's. I am in Mr. Kean's employment now. Before I heard it calculated here, I never calculated how long it would take to run 80 feet at 5 miles an hour. I heard the calculation here at 6 miles an hour.

Cross-examination.

By Mr. Moore:

Question. Do you say the greater the speed of the tug, the farther she will sheer in a given time or in running a given distance?

Answer. I say she will answer her helm quicker; but I don't say that she will sheer farther in a given time or in running a given distance.

Question. Will she not yield to her helm, and sheer farther in a running a given distance when ruuning at a speed of 4 miles an hour than running at a speed of 6 or 7 miles an hour?

Answer. She will sheer farther, but it will take more helm to do it.

The usual length of a tow-line is from 100 to 600 feet; it all depends on the captain of the vessel; in narrow work you can handle a vessel better with a short line.

Question. Cannot a heavier tow be handled by short lines between them than with long lines?

Answer. Yes, they can be handled easier if you have short work to do; but not in straight pulling.

122 Question. Can 4 vessels be towed as easy with lines 600 feet long between them, as with lines 100 feet long between them?

Answer. I think they can.

Question. Can a tow of 4 vessels stretched out for a mile with equal distances between them be towed as easily as with lines 100 feet between them?

Answer. No, sir; there is no custom as to the ordinary length of a tow-line; a tug generally gets all the line it can.

Question. Did you ever tow a tow of 4 vessels across St. Clair flats with lines of only a 100 feet between them?

Answer. I think the line between the knight-heads and the taff-rail rail, was not over a 100 feet between the vessels; I did it last year and year before, but cannot give the particular times or the names of the vessels; when the wind blows you just couple them right up to keep them from going on to the lee bank.

Question. Are not $\frac{4}{5}$ of the tow lines between vessels going from lake Huron to lake Erie from 25 to 40 fathoms long?

Answer. It is owing to circumstances.

(Same question repeated.)

Answer. I should think the were.

Question. Is not from 75 to 80 feet very short line?

123 Answer. It is a short line for a schooner, but not for a barge.

Question. With a line of that length, if a vessel fetches up, will the vessel astern be as likely to steer clear as she would with a line from 25 to 30 fathoms?

Answer. No, she would not.

Question. If you had directed the line of a vessel in tow of your

tug to be made fast at that length, and the vessel ahead of her should fetch up and be run into by the vessel astern, would you consider yourself guilty of any negligence or fault?

Answer. I would if it was a schooner, but not with a barge of that size. I saw the keel of the barge when it was laid; I was mate of her when she was a steamer; I do not know that the keel has ever been changed; she has been built from the water up; I should think she is about 130 feet long; from the flats to the head of the river the course by the chart is S. W. by south; I think I know that. The channel of 4 fathoms water I don't think is more than ½ a mile wide on both sides it is some little distance to where it is 10 feet of water.

Question. With a tow of 4 vessels on a good night to see with your tug in good condition if you came down from the flats across
124 the lake on the usual course, could you get on to that reef without being guilty of some negligence?

Answer. I think I could; my compass might carry me out of the way.

Question. If your compasses were out of condition your tug would be out of condition, would not she?

Answer. No.

Question. Would any of her appointments be out of condition?

Answer. Compasses vary from ½ a point to a point to a point in going that distance.

Question. If there is nothing unusual in the weather, cannot a good navigator determine those influences and avoid being deceived?

Answer. He could if he could make out the points of land; sometimes the land is deceiving, it looks farther off than it really is.

Question. With Detroit light in view and Gross point in view at a distance of 6 or 7 miles, cannot a man who is careful and diligent on that route see Peach Island far enough to avoid it?

Answer. Sometimes you could and sometimes you could not; that island is very deceiving as there are no trees on it.

Question. How far from the main land of that island is it N. E. to the depth of 10 feet of water?

125 I never got on to the head of that island; I never got into shoal water there; it is somewhat deceptive and a somewhat difficult channel on a dark night; but on a good night to see there is no difficulty to get in there; from the main land of the island to where it is 10 feet of water, I should think it was about a mile.

Re-examined.

By Mr. Newberry:

I should think the rudder of the barge has as much again surface as of a vessel.

L. R. BOYNTON,

Captain Dennis Swartout sworn; I have sailed 9 years; as master 8 years; on the lakes; on tug-boats all the time; I know Charles Evans who was master of tha Eagle last year; have known him 4 or

5 years; he never sailed with me; I have known him as an officer; I consider him competent, and have always heard him well spoken of.

Question No. 1, put to Captain Whipple. Is it the duty of a barge like the Frank Moore in tow in the night, to leave on deck a competent wheelsman and also an officer or lookout?

Answer. I should think it was.

126 Question No. 2. Is a boy 17 years old, shipped as part cook and part sailor, competent to act as wheelsman and lookout, and have sole charge of the deck of a barge like the Frank Moore, when in tow at night?

Answer. I should say not.

Question No. 3. Suppose a barge like the Frank Moore with a tow line from 75 to 100 feet, the 3d vessel in a tow coming across Lake St. Clair from 4 to 5 miles an hour, and the 2d vessel in the tow strikes bottom and ranges ahead ½ her length or more, before she fetches up and the officer of the 2d vessel as soon as she strikes passes the order to the barge to port will there be any difficulty in the barge sheering clear and passing the vessel aground without injury if the order to port is immediately obeyed on the barge?

Answer. No, sir, I should think not.

Question No. 4. Suppose from the fact that there is no one on the barge forward to pass the order to port, the wheelsman of the barge does not understand the order, and does not alter his helm at all, and the barge strikes the vessel aground on the stern post, would you not consider it great carelessness in the managment on the barge?

Answer. These would be mismanagement somewhere on the barge.

127 *Examination.*

By Mr. Holbrook:

There is a difference in barges; they are made of the hulls of schooners and steamboats; a steamboat is sharper than a schooner; otherwise the bottom is made for speed more than a vessel is; I don't think the hull of a steamboat would answer the helm quite as quick as a sail vessel; I have seen some barges that I don't think would steer clear; I know the barge Franklin Moore; knew her she was a steamboat and have seen her since, her length is something over 100 feet; I think she could steer clear with a line of 80 feet running at the rate of 7 miles an hour; where a vessel struck she would gradually slack speed until she stopped; if there is a good lookout forward, I think that they would know the vessel ahead was aground when the order to port or starboard was given; I think so because it is the custom; a vessel calculates to follow the tug without orders; there is no command from the tug to the vessels to port or starboard in crossing the flats; I have seen vessels clear with very short lines; I never towed a barge, but think a shorter line would do from a barge; I never see a barge have as long lines as I do on a schooner unless it is the large class barges; I have seen the Frank Moore use a short line last

128 summer; I don't know with what tugs, but I have seen her in tow of the L. L. Lion; it would take 3 or 4 seconds to pass an order and commence putting the wheel over.

Cross-examination.

By Mr. Moore:

Question. Is there any advantage in having a line 200 feet over having one 80 feet?

Answer. Don't think there is; don't think the barge Frank Moore would steer any easier now than she would when a steamboat.

Question. Do you think a barge or vessel of any kind can invariably steer clear in running 75 or 80 feet at the rate of 5 or 6 miles an hour?

Answer. I do.

Question. Is it as important in running in the open lake to stand as ready to change the heading at an instant's notice as it is in running through difficult channels?

Answer. I think not.

Question. If your vessel was sheering to port, would she be as likely to obey the order to port as if she was not sheering; and if not how long would it take to bring the vessel into that position so that she would obey the order to port as soon as if she had not been sheering?

Answer. It would take some little time to steady her, to bring her back on to her centre.

129 Question. About how long?

It would depend on how broad a sheer she had on. The course from St. Clair flats down is S. W. by S. until you haul up for the river. We run down until the light bears W. S. W. then haul up for the light, keeping it on the starboard bow; the course is then S.W. by W. The channel above Peach Island is a scant $\frac{1}{3}$ mile. From the main land of Peach Island out to a depth of 10 feet of water may be $\frac{3}{4}$ of a mile; may be further, may be not so far. I can't tell how deep the water is 400 feet from the main land of the Island. I never got on that reef. I have been through there 1,000 times; have been aground frequently in St. Clair flats; that is a difficult channel, they frequently have collisions between vessels in tow there. I have had vessels in tow and one vessel fetch up, and the other go clear of her although she had a very short line. I can't tell what vessel it was—it was quite late in the fall. I sailed the Red Erie last fall and the same boat this year. The line in the case I refer to was more than $\frac{1}{2}$ the usual length of vessels that I tow. I think it was 80 or 100 feet. I don't make a practice of directing the length of line between vessels.

Question. What do you mean then by the saying the vessels you take in tow?

130 Answer. I like shorter lines between the vessels than most men do.

Question. How do you get shorter lines between the vessels of your tows than others do unless you request it?

Answer. Because I don't request them to stick out a long line.

Question. Do vessels usually desire to give a long line or a short one?

Answer. A short one.

Question. Do master's of tug boats usually request them to give longer lines between vessels?

Answer. No, sir; they don't.

Question. How then do you get a shorter line than most tugs, if nothing is said in relation to it?

Answer. If I was going to get two much line I would sing out that there was line enough.

Question. Do you have occasion often to request them not to pay out any more line in order that it may suit you?

Answer. Not very often.

Question. How is it then that you get a shorter line than other tugs if nothing is said about it by other masters of tugs or yourself?

Answer. I presume there must be something said on board of other tugs; if they want a longer line they get it, and if they want a short line they get it.

131 Question. Do you ever request vessels in a tow to pay out more line between the vessels?

Answer. Yes, sir; I have.

Question. Under what circumstances?

Answer. In coming over the flats for fear of collision in heavy draft vessels. The usual length of a two line between vessels is about 20 fathoms. I should think 4-5 of the tow lines are not from 25 to 40 fathoms long, they might be.

D. SWARTOUT.

TUESDAY MORNING, *April 18th*, 1865.

Mr. Moore appears on behalf of the brig "General Worth" and Mr. Holbrook on the part of the barge "Franklin Moore;" Mr. Newberry, proctor for the tug "Eagle" being sick and unable to attend, therefore the further taking of testimony was adjourned untill tomorrow at 9 o'clock, a. m.

J. ELISHA WINDER,
U. S. Commissioner, Eastern District of Michigan.

Michael B. Kean sworn:

I was the owner of the tug Eagle at the time of this accident. I have built 6 or 7 vessels and steamboats and owned a dozen or more. I have sailed about 3 seasons, nearly all the time as master in the towing business entirely. I am practically ac-

132 quainted with the construction of vessels and steamboats. I know the barge Frank Moore, saw her keel laid and have known her ever since. She is lightly built. I have known her since she was a barge. She is a light draft vessel. Her draft with a load of lumber, I should think, would be about 6 feet. I saw the General Worth after the accident at Campbell and Owens dry dock. No injury was done to her bottom by getting on the rocks. Captain Cavelry and captain Pridgeon and myself went under her and examined her thoroughly. Her keel was spliced about 15 feet forward of her stern post; it was an old splice and appeared to be as old as the rest of the keel; where the splice was there was an old leak. I saw the

water running out of it. I examined her stern which was very rotten, her transoms was rotten and there was an old break in it. I conversed with captain Fraser at that time; he talked in relation to the break in the transom; he admitted that it was an old break; he said he expected to be able to get around with the vessel that trip to Buffalo and then intended to rebuild her. She was built in 1848. We talked about how the case was; he said the only one on the deck of the barge was the colored boy Frank Owens. Captain and I went around together at this time and examined the vessel. We

133 found her rotten, not only rotted off but fallen down; her cabin was pushed forward and the beam on which it rested was rotten and it was shoved up; he said she leaked more than usual coming across Saginaw Bay. I next conversed with him in Buffalo at the hotel on February following; that related to the work and the loss. He said that he personally had received over $900 from the Insurance Co. for the damage, and the amount of the new work added on by Campbell & Owen; but that he was urged to push the suit for the Insurance Co., the value of the new work put on at Campbell and Owens dock was considered and allowed by the contractors, Gibson & Hitchcock, on rebuilding her.

Question. How long would it take the sound of an order to pass from the stern of the Worth to the barge Frank Moore, supposing the tow line to be 80 feet long?

Answer. About 1-5 of a second.

Question. How long would it take to put the wheel of a barge like the Frank Moore hard over, and how do you know?

Answer. It would take from 3 to 4 seconds. I know by actual experiment on a barge or vessel of similar character; wheel located in a similar manner. A vessel commences to answer her helm as soon as it changes from amidships. Some answer faster than others.

134 The Frank Moore is a good steering vessel; has a large rudder and is quick. I have seen her many times as a steamboat leave the dock with her helm hard over, and I think, she would reverse her course in 4 or 5 times her length, from 500 to 600 feet.

Question. If she could reverse her course in going from 500 to 600 feet, how far must she of necessity sheer in going 80 feet and also in going 140 feet at a speed of 5 to 6 miles an hour?

Answer. At the rate of 5 miles an hour she would be going at the rate of 7 feet 4 inches a second. In going 80 feet she would sheer 16 feet, and in going 140 feet she would sheer 28 feet. The Eagle could not tow 3 loaded vessels to exceed 5 miles an hour.

Question. How much quicker will the same vessel sheer drawing 6 feet than if she drew 9 feet of water?

Answer. 50 per cent. faster. It is a matter of computation, a cubic foot of water weighs 62½ pounds. The pressure against the side of a vessel drawing 6 feet is 375 pounds pressure to the square foot and one drawing 9 feet would be 562½ pounds pressure to the square foot. She has 50 per cent. more water to displace in turning. I have known several tows, both tugs and vessels to ground

upon Peach Island. The tug Sampson with vessels in tow.
135 The Turner, another. The Elliott, another. There are others, but these are the only names I can recollect. The schooner Telegraph, the head vessel in this tow, drew 9 feet 3 or 4 inches.

Cross-ex.

By Mr. Moore:

I saw her lying at the dock and saw her marks. The captain said she drew 9 feet 3 or 4 inches. (What the captain of the Telegraph said is objected to by Mr. Moore.) No one was present when I had this conversation with captain Frazer. We were in the sitting-room in the hotel in Buffalo, when we talked there. I think I did not ask him to call on me, but am not positive. There were some present in the room at Buffalo. I think Captain Buckley was there. Don't think he heard the conversation.

Question. You stated that the Frank Moore would turn clear round in running 4 or 5 times her length, and you stated that she would sheer 16 feet in running 80 and 28 feet in running 140 feet is the 2d part of your proposition based upon the correctness of your first by a proportion.

Answer. The same proportion exists.

Question. You state that a vessel drawing 6 feet water will sheer 50 per cent. quicker than the same vessel drawing 9 feet wa-
136 ter. Does it make any difference with a vessel sheering whether she is loaded or light, running against, with, or across the current, in your proposition?

Answer. Yes, circumstances will slightly vary the general rule. At the point where the vessel grounded, I think the current is 2 or 2½ miles an hour.

Question. Will a vessel sheer quicker running against the current than running with the current?

Answer. It will depend on the speed of the vessel.

Question. A vessel running at the same speed through the water, will she sheer quicker running with or against the current.

Answer. If the speed of the vessel is equal to or little more than the current, she will sheer much faster against the current? If the speed of the vessel is considerably beyond the current, it will make but very little difference.

Question. Will not a vessel running at the rate of 5 miles an hour over the ground sheer twice as fast when running against a current 2 miles or 2 and ½ as she will when running with that current?

Answer. No, sir.

Question. How much faster or slower will she sheer.

Answer. At that rate of speed for both vessel and current together, the difference would be hardly perceptible.

137 Question. In running 80 feet how much more will a vessel sheer when running against a current of 2 or 2½ miles an hour, than running with the current?

Answer. It will depend on the speed of the vessel.

Question. Would the sheer be increased or diminished by increase of speed?

Answer. If the speed was considerably increased it would not make much difference.

Question. If you are crossing the current can you sheer up stream or down stream the quickest?

Answer. It depends upon the speed you are running. If the speed is but equal to, or little more than the current, she will sheer up stream the fastest; if the speed is increased considerably beyond the current, it would make scarcely any difference.

Question. If you are crossing at right angles a current of 2 and ½ miles an hour, at a speed of from 5 to 6 miles an hour, which way will she sheer the quickest, up stream or down.

Answer. I think she would be inclined to sheer the quickest up stream; but there would be hardly any difference.

Question. Your statement about the Frank Moore starting and turning clear round, in running 4 or 5 times her length, was based upon the fact that she lay at the dock with her bow up stream
138 in Detroit or Saint Clair river, was it not?

Answer. No, sir. I think with the aid of the current I could turn her in less than that distance. I have never sailed her. I don't recollect seeing the Frank Moore turn round in 4 or 5 times her length, except in Detroit or St. Charles river. I have not sailed in 6 years, and have sailed 3 or 4 seasons, and as master after the first three months; they were all vessels in which I had an interest The channel opposite Peach Island is a difficult channel; one of the most dangerous on the towing route. The channel there is ½ a mile wide, including the flats. A 12-foot channel, I should think, was ¼ of a mile wide; it is not ½ a mile, I think.

Cross-ex.

By Mr. Holbrook:

As a general thing, a vessel with a sharp bow minds her helm the slowest. The Moore was built for carrying and speed combined. She is a flat boat with a sharp bow.

Question. Will it not make a difference in the distance a vessel will sheer whether she has a sharp or bluff bow?

Answer. If you leave the draft of water out of the account, there is a slight difference in favor of the bluff bow; but it is only a
139 slight difference.

Question. Will not a vessel sheer round quicker against a current like that of the Detroit river, in just starting from the dock, than she would in running at the rate of 6 miles an hour.

Answer. No, sir; she would not sheer so fast.

Question. Will she not sheer quicker in a current like that of Detroit river, when she just starts from the dock, than she would in running at a speed of one mile an hour?

Answer. Yes; because the current overballances the speed. A vessel running 5 miles an hour with a current 2 and ½ miles an hour, her speed might be a little over 5 miles an hour; but the difference would be hardly perceptible. I do think it makes a slight difference whether she run up or down stream, but it would be slight.

Re-direct.

By Mr. Newberry:

I have frequently seen the Frank Moore round-to to the docks in coming down stream.

M. B. KEAN.

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141 WILLIAM T. FRASER, owner of the brig General Worth,
vs.
THE TUG J. E. EAGLE, her engine, boats, &c., and the barge Franklin Moore, her boats, &c.

Testimony on the part of the barge Franklin Moore.

James Jermin sworn:

I am 22 years old. I know M. B. Kean, Captain Fraser, and Mr. Doty. I remember the collision referred to in the libel in this cause. I have sailed, for the past 8 or 9 years, on the lakes and rivers. I was master of the barge at the time of the collision. I had sailed her since the 20th of May, the whole season. I remember being taken in tow by the tug Eagle the day before the morning of the collision. We were lying at Port Huron. We were taken in tow about 8½ o'clock in the morning. We employed the tug to take us in tow, and agreed to pay $40 to tow us to Detroit. The tug Eagle took us from the mouth of Black river to the old railroad dock, and put us alongside of the brig General Worth; the mate of the tug took our line and put it on the brig. We dropped astern of the brig about 14 feet, and made fast. The tug went ahead and got the schooner Telegraph, and then started down the river with her tow. At the
142 time of starting, as the tug was on the turn coming down stream, and we following the brig, I being forward, and paying out the line. I paid out about fifty feet, when I heard some one hollowing on the tug. I could not at first tell what was said; then he hollowed again to the barge to hold on to the line. I paid out about 10 feet more, when he hollowed again for the damned barge to hold on to her line. He also said, why the hell don't you hold on to your line; then some man on the brig told me to hold on to the line. I then told the barge to make the line fast. The captain of the tug was on the pilot-house at the time he gave the orders; the mate was standing aft, and they were the only two I saw on deck. We came down to Newport, and stopped there, and left there about 4 o'clock; then went to Baby's Point and stopped there. I went ashore there, and asked the captain of the tug when he was going out. He was piling wood on the tug at the time, and did not answer me. I saw the mate, and he said he thought they would go out as soon as they got on the wood. We stayed there until ½ past 8 or 9; until it was dark, and then started. We got down towards the flats, and I saw it was getting very dark, and blowing pretty fresh; and about 12 o'clock, after we had passed the flats, it cleared off. I remained on

deck till about fifteen minutes of 2 o'clock. I then went in the cabin and sat down on a stool and fell asleep. About ½ past 2 I was
143 aroused by the noise of the collision of the Franklin Moore and General Worth. As I came out of the cabin there was a coil of rope lying close to the cabin door, and my foot caught in it, and I fell overboard. When I got on deck again I saw the tug and the schooner Telegraph going way down the stream, just as though nothing had happened. The tug came back about ¼ past 3 o'clock, and came alongside the brig, which was hard aground. The captain of the tug went aboard of the brig and looked at the damage done to her, and came to me and asked me if I could not have cleared the brig. I told him no. He then went on the tug again; went in the cabin, and I did not see him again until daylight. Then he came and tried to pull off the brig, and parted the tow-lines of the brig. Then we took some lumber off the brig and put it on the barge, and then, after a while, the tug pulled the brig off. He then towed the brig and the barge into Detroit, and left the schooner at the head of Hog Island. The Worth was aground on Peach-Island reef as we were going over the flats; it was about eleven o'clock. I was at our wheel then myself. I left the wheel about 12 or ¼ of twelve of clock. We were then just clear of the stakes. We were then about 16 miles from where the collision occurred; it cleared up, and was starlight
144 after 12 o'clock; there was no moon. I could see the tug sheering, and the schooner and brig too; and it was difficult to keep the barge straight, otherwise I should have turned in earlier. We made a trip in about 10 days, and had made 8 or 9 trips that season before the collision. We carried no sails, but had to be towed. We were generally towed with a 150 or 160 foot line. Our tow-line is 210 or 220 feet long. If no orders had been given me, I should have paid out about 150 feet of line. I don't recollect that we were ever towed before with as short a line as that. Our tow-line remained the same length from Port Huron until the time of the collision. The ordinary length of a tow-line on tugs which I have sailed on, is from 150 to 170 feet. Frank Owens was at our wheel at the time of the collision. He was capable of handling the wheel; he was a smart, active boy. Our wheel is on a platform, above the main deck about 3 feet. The lumber was about 2½ feet above the main deck, about 2 feet forward and 2 and ½ aft. There were 3 men on the barge altogether; Richard Dougherty was the third man; he lives in Malden. I have been there three times to get him to come here as a witness; first he said he would come, and would be down at the boat to come up with me, but he did not come. Then I went down again
145 in a buggy in the evening; he then said he would go up in the morning with me. I called for him at 5 o'clock, and told him I would pay all his expenses. He said he was sick, and could not come. I went down again, and he said then he would not come at all. I always took my turn at the wheel on the barge in crossing the flats, because I was familiar with the channel. When the barge is loaded and the order to port is given, it would take about a minute for her to begin to sheer. She was long, and her wheel was hard to come over;

her rudder was large; it took her a good while to begin to swing, but she swung fast when she did commence. It would take a little over three turns of the wheel to make her rudder turn to port or starboard. I think I have heard Captain Kean say that he could put the wheel of the barge over in about 16 seconds; that cannot be done; it might be done if she lay alongside of the dock, but not when she is under weigh; with the length of line she had out it was not possible to have cleared the brig; it might have been done, possibly, if we had known the brig was aground beforehand, and in broad daylight; but even then, I think we would have struck her quarter. There was
146 no way to tell, as we were running, that the brig was aground.

If there had been a lookout, and the order to port given and strictly obeyed, the collision could not have been avoided. The barge was drawing a little over 6 feet of water. I think she drew the least water of any vessel in the tow. I heard the boys on the barge and brig both say that the captain of the tug was drunk; and also that the mate was asleep, and they did not know on the tug that the brig was aground until the engineer on the tug gave the alarm.

JAMES JARMIN.

Captain Dustin sworn:

I have been a marriner, for the last 15 or 20 years, between Buffalo and Lake Huron. I have passed from Port Huron to Detroit every week day during the season of navigation. The course taken from the flats down to the river usually is S.W. by S., and when we get to Grosse Point we vary a little. We follow the courses laid down on the chart, making an allowance for the variations of the compass.

I have commanded tugs. The usual length of line for towing
147 a vessel from Port Huron varies from 200 to 300 feet, and even longer. If vessels are very heavy draft, the heavy ones are put last; with three vessels in tow, and going at the rate of six miles an hour, and the last vessel having a line out of eighty feet, if the vessel ahead grounded, there are circumstances which would make it possible for the last vessel to steer clear; and there are circumstances which would render it impossible to do so; it could not be done unless she is a quick steering vessel. I know the Franklin Moore, afterwards converted into a barge. She is a good steering boat, but not a quick one. She could not be thrown off four points half as quick as most vessels built for sail vessels; an eighty-foot line seems to me to be a very short one. How quick and how much a boat would sheer would depend on how the line was made fast. If the line was made fast on the starboard side of the after vessel and she wanted to go to the starboad side of the vessel ahead, the line would be a detriment to her sheering much; but it would aid her to sheer, if fastened on the other side. She would not be half as likely to sheer with a line 80 feet as she would with one 150.

Examined.

By Mr. Moore:

I know the channel at the head of Peach Island. It is $\frac{3}{4}$ of
148 of a mile 20 feet water. It is not considered a dangerous pas-

sage; the ranges are very easy to come into Detroit river. If you go on to Peach Island Reef you must be at least ¼ of mile out of usual course. I never got on to that reef, and have been through there night and day with tows, and also light. It would be bad piloting to get on unless there was a fog.

Question. Would a tug with a tow of three vessels coming across St. Clair lake, on a good starlight night, get on to that reef without being a good ways out of her way, and without gross negligence on the part of those navigating her.

Answer. She would not go on that reef without being a good ways out of her way. I think that 19 out of 20 of our tug pilots would come through there 100 times without getting on. I think an 80 foot line is a short line, shorter than, I think, I have ever towed with; but I may have towed with so short a line. The usual length is from 150 to 250 feet between vessels. A vessel loaded would not sheer as quick as a light one. I have sailed as master about 19 years on the lakes.

Cross-examined.

The momentum which the barge would acquire would give
149 her steerage way just as well, for 10 or 20 seconds, as if the vessel ahead had not run aground. I cannot give any other opinion as to whether the barge could sheer clear or not, any more than what I have said about the line being made fast. If the line was fastened forward, directly in the centre, the motion power would be the same in effect as though she was going with a fair wind. She would also have the same control over her own motions. The line is generally put from 10 to 12 feet from the centre.

SELAH DUSTIN.

Captain Alexander Mann sworn: I am a sailor, and have sailed 36 years. I have sailed on the lakes, from Chicago to Buffalo, for the last 20 years. I have sailed from Milwaukee to Liverpoool once. I have sailed No. 1 vessels in the grain trade. I have generally been towed, when in a sail vessel, from Lake Huron to Lake Erie, and from Lake Erie to Lake Huron. Have passed up and down on or twice a month, during the sailing season, for the last 10 years. The usual length of line for vessels in tow is from 160 to 250 feet. I know the channel at the head of Peach Island. I have seen the Franklin
Moore as a steamboat. A steamboat will not mind her helm
150 as quick as a sail vessel. I don't think it possible for a vessel to steer clear of one ground with only an eighty foot of line out, and running 6 miles an hour. She would not be half as likely to steer clear with a line 80 foot as with one 50 feet.

Examined.

By Mr. Moore:

The channel at the upper end of Peach Island is ¾ of a mile or a little over. I don't consider it a difficult passage. I have been up and down a great many times and never been on there; yet a vessel

coming across there must be a good way S. E. of her course to get on to that reef. After getting into the lake, the course to the flats is N. E. by N., and coming down it would be S. W. by S.

Cross-examined.

By Mr. Russell:

I have not been towed by an 80 foot line unless when a ground. I know the tug Eagle. I don't consider her a 1st or 2d clas tug. In coming into the river, we can see the light generally. In a thick night tugs coming along there check down and run slow.

ALEXANDER MANN.

151 Peter J. Ralph sworn: I have sailed 20 years both on steamboats and sail vessels, as master about 5 years. I am marine inspector of hulls at this port now. I am perfectly familiar with the channel, from Lake Erie to Lake Huron. I cannot tell the exact length of tow lines used, but I should say from 100 to 200 feet; I should say 80 feet was a short line. A steamboat does not mind her helm as quick as a sail vessel. With a line of 80 feet, and running 6 miles an hour, I should think it would be very difficult for the stern vessel to clear the one ahead; with a line of 80 feet, she would not be one half as likely to clear as with one 150 feet. I don't think it possible to have avoided a collision, running with the speed and length of line as given.

Examined.

By Mr. Moore:

I know the channel near Peach Island. At the head of Peach Island Reef it is from $\frac{1}{4}$ to $\frac{3}{4}$ of a mile of good depth of water. I do not consider it a difficult channel. I never got on to that reef. My tug once got one of the vessels in tow on there; I discharged the mate at once, who was navigating the tug, and paid the damages.

152 *Cross-examined.*

By Mr. Russell:

This was the tug A. A. Turner that occurred in 1862. I think. I don't consider that passage a dangerous one. I don't remember any other vessel getting on there, but they may have been. It is the duty of a vessel in a tow to keep a look out.

Question. Suppose the Franklin Moore had had a lookout, and had the ability to mind her helm, could she not have avoided colliding with the Worth with that length of line?

Answer. I should hate to try the experiment.

PETER J. RALPH.

Endorsed: No. 811. District Court U. S. eastern district of Michigan. In Admiralty. William J. Fraser, owner of the brig General Worth, *vs.* The tug J. E. Eagle, her engine, &c., and the barge Franklin Moore, her boats, &c. Testimony on the part of the barge Franklin Moore. Filed and entered in open court, and received

from commissioner Winder, May 11th, 1865. William D. Wilkins, dept. clerk.

Commissioner's fees:

33 Folios at 20 c.	$6 60
Swearing 4 witnesses	40
	$7 00

153 *Interlocutory decree for damages against tug, with reference to commit, to ascertain and report damages, and dismissing libel as against barge.—Passed and entered May 30th, 1865.*

IN THE MATTER OF THE LIBEL AND CLAIM OF William J. Fraser, owner of the brig General Worth,
vs.
THE TUG "J. E. EAGLE," her engine, machinery, boats, &c., and the barge "Franklin, Moore," and her boats, tackle, &c. } In Admiralty.

The court having taken time to consider as to the decree in this cause, and having maturely weighed the pleadings and proofs, and the arguments of counsel submitted therein, doth now order, adjudge, and decree that the libel of said William J. Fraser, owner as aforesaid, against said barge Franklin Moore, her boats, &c., be, and the same is accordingly hereby dismissed with costs against said libellant Fraser, to be taxed,; and that the libel of said William J. Fraser, owner as aforesaid, against said tug James E. Eagle, and her boats, &c., be, and the same is accordingly hereby, sustained and allowed upon the facts and premises stated and alleged by said libellant therein; and that it be referred to William D. Wilkins, esq., a commissioner of this court, to ascertain the damages of the said libellant in this cause, as against said tug, to take such testimony as may be offered by either of the parties to this suit, and to
154 report to this court the amount proved to be due said libellant from said tug J. E. Eagle, her owners or claimants, with all convenient speed.

Notice of appeal from above decree and order, granting time to perfect the same.—Entered June 6th, 1865.

WILLIAM FRAZER, owner of the brig Gen'l Worth,
vs.
THE TUG "J. E. EAGLE," and her engine, boats, etc.

Mr. Newberry, on behalf of the claimant of said tug, now give notice in open court that he will appeal from the decree of this court, entered in this cause, on 30th, 1865, sustaining the libel of said Fraser against said tug, to the Circuit Court of the United States for seventh circuit and eastern district of Michigan, and is now granted twenty days subsequent to the filing of the commissioner's report, under the order of reference in this cause, to perfect said appeal; and

it is now ordered that the order dismissing the libel of said Fraser against the barge Franklin Moore be suspended until the same period.

Order confirming commissioner's report, and decree, and judgment on bond.—Passed and entered August 4th, 1865.

155 IN THE MATTER OF THE LIBEL AND CLAIM of William T. Fraser, owner of the brig General Worth,
vs.
THE TUG J. E. EAGLE and her engine, boats, &c., Michael B. Kean, claimant, and the barge Franklin Moore, and her boats, tackle, apparel, &c., Alexander H. Doty, claimant. } In Admiralty.

The court having heretofore, by decree in this cause, on May 30th, 1865, dismissed the libel of said Fraser as against said barge Franklin Moore, her boats, &c., with costs against said libellant and having referred it to William D. Wilkins, a commissioner of this court, to ascertain and report to the court the damages sustained by said libellant as against said tug J. E. Eagle, and her engine, boats, &c., having by said decree sustained and allowed said libel as against said tug; and said commissioner having heretofore filed in this court his report, under said order of reference, showing that there is due to said libellant, William J. Fraser, owner of said brig General Worth, from said tug J. E. Eagle, her engine, boats, &c., for the damages sustained by said brig, caused by the negligence and improper conduct of the officers and crew of said tug, on September 2nd, 1864, the sum of two thousand seven hundred and ninety four dollars and ten cents ($2,794 10), as set for in items in said report, and no objections or exceptions having been filed to said report. On
156 motion of William A. Moore, esq., libellants proctor, on behalf of said libellants, and no person now appearing on behalf of the claimant of said tug J. E. Eagle to object thereto; and on sufficient reason to the court now here shown, this court, by virtue of the power and authority therein vested, doth now order, adjudge, and decree that the said commissioner report, the matters and things therein contained, and all the proceedings had in this cause, do stand ratified and confined; and that the said sum of two thousand seven hundred and ninety four dollars and ten cents, damages reported by said commissioner as aforesaid, be, and the same are accordingly hereby, awarded to said William T. Fraser, libellant, against the said tug J. E. Eagle and her engine, boats, &c., and against said Michael B. Kean, claimant of record for his damages in this cause; and said claimant, Kean, having, on April, 20th, 1865, filed in this court stipu-

lation in the sum of fifty-three hundred and fifty dollars, conditioned to abide and answer the decree of this court, and to pay the award thereof, and consenting that unless he should do so that execution should issue against him therefor. On motion of William A. Moore, esq., libellants proctor, it is further ordered that said claimant, Michael B. Kean, do, within ten days from this day, pay into the registry of this court the said sum of twenty-seven hundred and ninety-four dollars and ten cents, damages awarded to said libellant
157 as above, together with the taxed costs of this suit, as against said tug; or that in default thereof, execution do issue against him therefor, which said costs, pursuant to the provisions of the act of Congress in such case made and provided, are now here taxed at the sums following, and are made a part of this decree, to wit:

William A. Moore, esq., libellants proctor, for docket fee, on final hearing and stamps, twenty 50-100 dollars....	20 50
And for commissioner's fees, paid J. E. Winder, commissioner, for taking depositions for libellant, read in said cause.....	
And for commissioner's fees, paid T. S. Blackmar, U. S. Commissioner, for taking depositions for libellant, read in said cause.....	21 50
Amount for fees of libellant's witnesses sworn in said cause, and not heretofore paid by said claimant, as for affi't. now filed, and for attending on taking six depositions read in evidence in said cause.....	15 00
And for attending on taking seven depositions read as evidence in said cause.....	17 50
Charles Dickey, U. S. Marshall for service of process in this cause for libellant.....	2 06
William D. Wilkins, U. S. Commissioner, his fees, under order of reference, as marked on his report.....	24 50
Jno. Winder, clerk of this court, his taxed costs as against said tug, of record in this cause.....	65 80
Making in all for the taxed costs of this cause, payable by Kean, claimant.....	$166 86

158 And it is further ordered and decreed that the said William T. Fraser, libellant, do, within 10 days from this day, pay into the registry of this court the taxed costs of said Alexander H. Doty, claimant of said barge Franklin Moore, on the dismissal of his libel against said barge as decreed by this court; or that in default thereof, execution do issue against him and against William H. Moore, esq., his proctor of record therefor, which said costs, pursuant to the provisions of the act of Congress in such case made and

provided, are now here taxed at the sums following, and are made a part of this decree, to wit:

D. C. Holbrook, esq., claimant's proctor, for said barge and docket fee, on trial hearing of twenty dollars	$20 00
And for fees of libellant's witnesses sworn in said cause	
And for fees of J. E. Winder, U. S. Commissioner, for taking depositions for said claimant	7 00
Charles Dickey, U. S. Marshall, for serving process in said cause for said claimant	2 06
Jno. Winder, clerk of this court, his taxed costs as against said libellant of record, in this cause, being	8 90
Making in all for the taxed costs of this cause, payable by said Fraser, libellant.	$

Order denying claimant's motion to set aside commissioner's report and open decree.—Passed and entered October 10th, 1865.

159 WILLIAM J. FRAZER, owner of the brig General Worth,
vs.
THE TUG J. E. Eagle, her engine, &c., M. B. Kean, claimant.

The motion heretofore made by said claimant, to set aside the report of the U. S. Commissioner, upon the amount of the damages sustained by the libellant in this cause, and the decree of the court heretofore entered on said report being further heard, on the additional affidavits of William A. Moore and William D. Wilkins, submitted by said libellants, the court now deny and refuse said motion, and now order that said claimant perfect the appeal heretofore by him taken to the Circuit Court, in this cause, within five days from this day.

161 District Court of the United States, for the eastern district of Michigan, *ss.*

IN THE MATTER OF THE LIBEL AND CLAIM of William T. Fraser, owner of the brig General Worth,
vs.
THE TUG J. E. EAGLE, and her engine, boats, &c.. (libelled with the barge Franklin Moore.)
} In admiralty.

To the Honorable Ross Wilkins, judge of the aforesaid:

In pursuance of a decretal order made in the above-entitled cause, on the thirtieth day of May, A. D. 1865, by which among other things, it was referred to the undersigned, a commissioner of the

court aforesaid, to examine into the claim of the said libellant on file in this cause; to take such testimony as might be offered in relation thereto, by either of the parties to this suit, and to report to the court aforesaid the amount proved to be due to the said libellant, upon the libel on file in the couse aforesaid, with all convenient speed.

I, William D. Wilkins, commissioner as aforesaid, to whom the matter was referred as aforesaid, do report that I have been attended at my office in the U. S. District court-house, in the city of Detroit, Michigan, on the 3d, 5th, and 25th days of July, A. D. 1865, by William A Moore, esq., libellants rector, by Alfred Russell,
162 esq., proctor for the claimants of said tug Eagle. And have taken and examined the testimony offered in support of libellants claim, and do find therefrom. that there is due from said tug J. E. Eagle, and from owners or claimants to the said libellant, William T. Fraser, for damages sustained by said brig General Worth, by reason of a collision between said brig and said tug, and for detention and expenses arising therefrom, as follows:

Repairs at the dry dock	$1,056 95
Other repairs and necessary expences	703 55
Demurrage	1,033 60
	$2,794 10

Making in all the sum of twenty-seven hundred and ninety-four $\frac{10}{100}$ dollars, due said libellant from said tug J. E. Eagle, her engine, &c.. and her owners or claimants on this day.

The above sum reported as damages, is made up of the subjoined items, and is based upon the reasons following, to wit:

Amount allowed for repairs of vessel at Campbell & Owens ship yard, in Detroit, rendered necessary by damages inflicted by collision, and rendered in items in bill hereto attached $1,056 95.

This bill is supported by the testimony of McLeod and Couls, the foreman of the ship yard. who had immediate charge of the
163 repairs, who swear that all the work stated, was necessary to repair damages caused by the collision, and that the prices are reasonable and proper.

Per contra.—Kean, claimant of the tug, swears that the vessel was old, and in some places, where repairs were made, was rotten; and that it was the owner's intention to rebuild her at the close of the season in which the collision occurred; and that she was so rebuilt at Buffalo and that the new work in rebuilding, was the work done in repairing at Detroit, which repairs were allowed for by the contractors who rebuilt her at Buffalo.

But Fraser, the libellant, contradicts this statement as to her rottenness, and swears that his intention as to rebuilding, on the season of the collision, was only to convert her from a lumber to a grain vessel, and would not require repairs or alterations below her water line, and it appears to me that the evidence of the two ship-yard

foremen, impartial and disinterested witnesses, who personally superintended the repairs, and who swear they were necessary to make good the damage caused by the collision, and that the vessel was not rotton where the repairs were made, should be conclusive in the allowance of this item of charge.

164	Bill for yawl boat, to replace yawl destroyed by collision	$100 00

Supported by testimony of libellants, Fraser, and by bill appended.

Paid barge Franklin Moore for lightering vessel off rocks at point of collision	35 00
Damage to hawser and towline, broken pulling at vessel in trying to get her off	115 00
Unloading lighter and vessel at Detroit	42 00
Wages and provisions of crew of 5 sailors, while vessel was in Detroit	30 00
Painting repairs on damages done by collision in Buffalo	30 00
Calking at Buffalo, to make good damage done by collision	20 00
Cash paid for rebuilding vessel at Detroit, after repairs	37 90
Wages and board of master, mate, cook, boy, and 3 seamen, while vessel was undergoing repairs at Detroit,	290 25
Lights and glazing skylight, broken by collision, not charged in Campbell & Owens carpenter's bill	3 30
	$703 55

Total charges and disbursments, in addition to those stated in bill of repairs, proved and supported by testimony of libellant Fraser.

I have rejected the following items stated in this by said libellant.

Expenses of maritime protest, and certified copy	$7 50
Expenses of survey of damage caused by collision	10 00
Cost of zinc casing to rudder at Buffalo, to make tight the work done at Detroit; the work done at Detroit should have been ascertained sufficient before acceptance and payment	12 00
Extra towing from Detroit to Lake Erie after repairs, it not being shown that such extra towing was [was] rendered necessary in consequence of the collision	20 00
Total amount rejected	$49 50

165 *Demurrage.*

For eighteen days detention of said vessel at Detroit, while unloading, undergoing repairs, and reloading, caused by collision, sixteen days at $64 60 per day, amount as proved by libellant, bases on the earnings and expenses of his vessel on the trip of the collision, and the prior and succeeding trips, from memoranda kept by him.

Total amount allowed for demurrage, $1,033 60.

All of which damages appear a valid and existing admiralty, upon

said tug J. E. Eagle, her engine, boats, &c., in favor of said libellant, William T. Fraser, for damages to his brig, the General Worth, caused by the collision in question in the suit under consideration, all of which is respectfully submitted.

WILLIAM D. WILKINS,
U. S. Commissioner, Eastern District of Michigan.

Dated, Detroit, August 1st, 1865.

Costs taxable on above reports:	
Commissioner attending under order of reference, 3 days, at $3	$9 00
Defendant's clerk report, 13 fol. *a* 20c., $2.60; filing do. 10c.	2 70
Filing, marking, and numbering 2 exhibits *a* 10c.,	
166 20c; subpœnas for witnesses, filing do when returned, and entering returns on do. 2 *a* 50c., $1; swearing 8 witnesses *a* 10c., 80c	2 00
Taking 7 depositions, 54 folio *a* 20c	10 80
Total commissioner's fees	$24 50
Libellant's proctor, attendance on taking 7 depositions *a* $2 50	17 00
Libellant's witnesses, 6 days in all, at $1 50	9 00
Total costs of reference	$51 00

167 *Exhibit "A," attached to depositions on July 3rd, 1865, by me, William D. Wilkins, U. S. Commissioner.*

Brig. General Worth to Campbell & Owen, Dr.

1864.		
Sept.	3. To 26 feet pine, *a* 2½c.	65
	7. To 50 do. *a* 4½c.	2 25
	10. To 6 lbs. nails, *a* 13c.	78
	To 1 paper brads, *a* 1*s.* 6*d.*	19
	12. To 1 dockage, 267 tons, *a* 20c.	51 40
	To 229 feet sawed timber, *a* 4	9 16
	To 162 cubic feet timber for beams, *a* 2*s.* 6*d.*	50 63
	To 1,166 feet oak, *a* 4c.	46 64
	To 58 do. *a* 5c.	2 90
	To 30 feet wedges, *a* 8c.	2 40
	To 64½ lbs. iron, *a* 13c.	8 39
	To 20 lbs. spikes, *a* 13c.	2 60
	To 1 lb. nails, *a* 13c.	13
	13. To 1 lb. clinch rings, *a* 2*s.* 6*d.*	31
	14. To 62 lbs. spikes, *a* 13c.	8 06
	To 113 lbs. iron, *a* 13c.	14 69
	To 2 lbs. nails, *a* 13c.	36
	To 436 feet oak plank, *a* 5c.	21 80
	To 474 do. do. *a* 4c.	18 96

	To 7¾ quarters augurs, *a* 2*s*. 6*d*.	2 43
15.	To 100 lbs. spikes, *a* 13c.	13 00
	To 830 feet deck plank, *a* 4½c.	37 35
	To 200 feet pine, *a* 3½c.	7 00
	To 24 do. *a* 2½c.	60
16.	To 13 lbs. spikes, *a* 13c.	1 69
	To 84 feet deck plank, *a* 4½c.	3 78
17.	To 6 lbs. spikes, *a* 13c.	78
18.	To 9 lbs. nails, *a* 13c.	1 17
	To 9 lbs. iron, *a* 13c.	1 17
	To 200 feet oak plank for taffrail, *a* 5c.	10 00
	To 50 do. do. wheel stand, *a* 5c.	2 50
	To 60 do. do. rail, *a* 5c	3 00
	To 100 do. do. stem plank, *a* 5c.	5 00
	To 60 do. do. for stern chocks, *a* 5c.	3 00
	To 75 lbs. oakum, *a* 19½c.	14 63
	To 50 lbs. pitch, *a* 7c.	3 50
	To 1 mo., *a* 6*s*.	75
	To trimmings for cabin, &c.	1 00
20.	To 6¾ days foreman, *a* 40*s*.	33 75
	To 10¼ days carpenters, *a* 36*s*.	46 13
	To 10 days carpenters and caulkers, *a* 34*s*.	42 50
	To 126¾ days do. do. *a* 32*s*.	507 00
	To 14¾ days do. do. *a* 28*s*.	51 63
	To 6¼ days do. do. *a* 18*s*.	14 06
	To 1 day do. do. *a* 12*s*.	1 50
	Blacksmith's bill	12 34
		$1,063 45

Detroit, September 20th, 1864.

Cr.

Sept. 20.	By 50 lbs. spikes returned, *a* 13c.	6 50
		$1,056 95

Contra.

Sept. 20. By draft on Oliver Bugbee for five hundred and fifty-six 95-100 dollars, to be a receipt in full when paid.

CAMPBELL & OWEN.

Detroit, Sept 20th, 1864.

168 *Exhibit B.*

Endorsed. WILLIAM D. WILKINS,
U. S. Commissioner.

July 5th, 1865.

Brig. General Worth to S. B. Grummond.

Paid $100. Received draft on Erie Savings Co. Bank.

S. B. GRUMMOND.
By E. R.

169 The President of the United States of America to Alexander McLeod.

You are hereby commanded, that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the district of Michigan, at the court-house in the city of Detroit, in said district forthwith, then and there to testify and give evidence in a case to be tried, wherein William T. Fraser is libellant, and the tug J. E. Eagle and her owner are defendants on behalf of the said libellant. Hereof fail not, under the penalty of what may befall you theron.

Witness, the Hon. Ross Wilkins, judge of said court, at Detroit, this third day of July, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] WILLIAM D. WILKINS,
U. S. Commissioner.

170 I hereby accept service of the within writ, and have copy of same.
Detroit, July, 1865.

ALEXANDER McLEOD.
RICHARD COULS.

Endorsed: United States District Court, Michigan. Subpœna
vs. Returnable 18, at M. Returned and filed ,
1857. ——— clerk. ———— ———, proctor for .

171 U. S. District Court, eastern district of Michigan.

WILLIAM J. FRASER, owner of the brig General Worth
vs.
THE TUG J. E. EAGLE, and the barge Franklin Moore.

Before W. D. Wilkins, U. S. Commissioner, eastern district of Michigan.

Depositions taken under order of reference to commissioner, to ascertain libellant's damages in above cause, taken at Detroit, Michigan, on July 3d and 5th, 1865, in presence of William A. Moore, libellant's proctor, and A. Russell for claimants of tug J. E. Eagle.

Alexander McLeod, a witness for the libellant being sworn, says: I live in Detroit; am a foreman for Cambell & Owen, ship builders; have been their foreman six years. I know of the brig General Worth being repaired there in September, 1864. The bill herewith produced and attached and mark "A" are the very items performed in said repairs and are correct, as I measured the work myself, or gave it to the clerk. I know that the materials stated in said bill were used in making said repairs, and that the men named in
172 the bill worked on the vessel in making said repairs during

the time stated, and for the prices specified as set opposite each man's name; and that those prices were the going prices for the articles charged and the work performed, and were reasonable and

just. There was no work performed, as stated in said bill, that was not rendered necessary by said collision. The stern was crushed in by the collision; the taffrail quarter and counter timbers, rails and plank-shears, main transom and two transoms below it, and also four beams were all crushed in by the collision; also a certain number of stancheons; I don't remember the number exactly; the break looked new enough; there was no appearance of decay about it. The deck was torn up likewise; the stearing-gear disarranged; the vessel's stern appeared to be good and sound, except where damaged by the collision. The vessel's stern wasn't much better after the repairs than it seemed to have been before the collision. Saw no appearance of decay, except under the cabin-sills, which are on the main deck; all the broken work was taken out. The main transom which was broken was not taken out, but a new one was spliced on it, and at least $100 expense was saved by that; all the work about the cabin that could be patched, was patched up, except where new work was obliged to be put in; no work was put in, except to make the
173 vessel as good as it was before. No transoms were taken out. The lower transoms were not taken out, but a hook put inside; this saved expense of course.

ALEXANDER McLEOD.

Sworn and subscribed before me, on July 3d, 1865.

WILLIAM D. WILKINS,
U. S. Commissionar Eastern District of Michigan.

Richard Couls, a witness for the the libellant being duly sworn, says: I am a ship-builder. Have been first foreman in Campbell & Owens' ship-yard, and at that dock for twelve years. I remember the brig General Worth being repaired in that dock, in September, 1864. She must have been in the dock for more than a fortnight, The men began at work on her repairs as soon as they could, the day after she got there, and she went out of the dock on the very day the repairs were completed. The whole of the repairs on her was done as soon as possible, as many men working on her as could work to advantage. (Exhibit "A" attached to depositions, being bill of items, shown to witness.) The items stated in this are correct, and the services stated therein were performed in the dock, and was necessary on the repairs of the vessel caused by the collision, and the charges therefor were at the time reasonable, proper and customary. There was no work done on the vessel, which was
174 was not in the nature of repairs to damages caused by the collision; and there was not as much work done upon her as ought to have been, to make her as whole as she was before. The break was right square on her stern, driving her cabin right forword, breaking her beams, taffrail, main transom, and three of her

lower transoms. These transoms we did not take out, but put a piece on top to save expense. Had we taken them out, it would have cost $200 more. There were no breaks in the vessel that were not new breaks where the timbers were broken; they were not as sound as when new, but they were by no means rotten for all of that. Her stern was not an old stern, none of it was rotten to my best knowledge. The item charged in the bill for dockage is correct and proper. We had to take out part of the vessel's load, in order to dock her. She could not have proceeded on her voyage without these repairs. Captain Fraser worked on the vessel during her repairs all the time; also Collins, the mate, and some of his men; and their time and labor was not included in Campbell & Owen's bill.

RICHARD COULS.

Sworn and subscribed before me on July 3d, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

175 Andrew S. Blackwood, a witness for the libellant being duly sworn, says: Reside in Detroit; am book-keeper at Campbell & Owen's ship-yard, and was, in September, 1864 and 1865. I remember when the brig General Worth was repaired there. She came here on September 2d, (that is, work commenced on that day;) the last work on her was done on September 20th, while she lay there; as many men worked on her as could work to advantage. The work on her was done, so far as I am aware, as soon as it could be, conveniently. (Exhibit "A" attached to repairs, now shown to witness.) This is a copy from Campbell & Owen's books, kept by me, which I made out. It is a correct account of the work done on the vessel and the amount of materials furnished, and the prices therein specified were reasonable, and were the customary prices at the time. The bill was paid by libellant by draft on Bugbee, of Buffalo, which draft was subsequently paid.

Cross-examination.

Question. Have you any such experience in working upon the repairs of vessels, as to enable you to judge in regard to the extent or necessity of the work or the time requisite for doing it?

Answer. I have not.

Question. Is not your connection with the concern of Campbell & Owens that of an accountant only?

176 Answer. It is; the account for the material is given in to me by the foreman and the workmen on the different jobs. The day's work is kept by myself. This work was done by day's work.

Question. Are you able to give an opinion as to whether the work could have been done more cheaply by the job?

Answer. I am not.

Re-direct examination.

Have every reason to believe the captain made the expense there as light possible, as he was anxious to get away as soon as he could.

ANDREW S. BLACKWELL.

Sworn and subscribed before me on July 5th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

And the said libellant, William T. Fraser, being duly sworn, says: Am libellant in this cause. (Extract "A" shown to witness.) I paid this bill. My vessel was at Campbell & Owens' dry dock from September 2d, 1864, at about 11, a. m., and left there on September 20th, at noon, as near as I can now remember. The work was not done by contract, because I could not get it done in
177 that manner. I stayed there at the dock most of the time, and assisted in making repairs, using most of the old spike and iron that could be used over again. The first two days in dock, I had all my crew on my vessel, aiding in the unloading of the vessel and getting her ready for repairs, which was work that had to be done, in order to repair her. I now mean to say, that there was a portion of the first two days that my foremast hands would not work, because they were unwilling to unload the vessel, claiming it not to be customary in the lumber trade, so I then discharged them, and paid them up to the time of giving them the money. After that, the mate, the cook and an ordinary seaman remained until she came out, assisting some on the repairs, drying sails, pumping her, &c., and assisting in the dock as well. She had to be lighted up before she could go on to the blocks. None of the work of the seamen or myself was included in the carpenter's bill. I got her repaired, all that could be done, without unloading part of her load, as soon as I could. Cannot state any work done on her, included in the carpenter's bill or done by the seamen, which was not rendered necessary by the collision, except the taffrail, which was knocked off by a vessel's jib-boon coming over Saganaw Bay, and for which I settled with
178 the tug doing the injury, for $25. There was not so much work here as to make good the damages done by the collision. The damages was not thoroughly repaired here. On arrival at Buffalo, I had a broken chain-plate repaired. One length of fender repaired, and the stern finished painting and calking; these being damages caused by the collision, and which could not be done, within the time, at Detroit.

My items of expense, in addition these in Exhibit "A" are, as follow:

Paid barge Franklin Moore, for lighting vessel off rocks at point of collision $35 00

My hawser was broken twice, and my tow-line broken, in pulling at the vessel to get her off. This damage was estimated by the surveyors at $115 00

Which I think a fair estimate, as rope was high at the time.

It cost me $1 00 to telegraph to insurance, at Buffalo. Unloading lighter and vessel. at Detroit, (in addition to the labor of my own crew, who would not work, as they claimed it was not the custom to unload,) for this, I actually paid at 40 c. per hour, the sum of..... $42 00

The wages of my crew, of 5 sailors, while the vessel was laying in Detroit, $2 25 per day. Sum actually paid.... $22 50

Provisions for those same men for that length of time being 75 c. per day actual cost..... $7 50

Expenses of maritime protest and certified copy of same, paid..... $7 50

179 Expenses of survey of damage caused by collision, $10.

Yawl-boat to replace yawl destroyed by collision, as per bill appended, and marked Exhibit B, amount paid (being for a second-hand boat) a new boat would have cost $135. I searched all round, and this was the best I could do for a boat, $100.

Painting in Buffalo, in repair of damage done by collision; done by contract; amount actually paid, $30.

A zinc casing around the rudder, to make tight the pine casing, which was put in at Campbell's ship-yard. The old casing around the rudder was an oaken one, and was tight, and it was broken by the collision. This was done at Buffalo, and the zinc casing cost $12. It is probably a little stronger now than the old one, having two casings; but it is not tight yet, nor do I call it as good as the old one. Cost $12.

Calking done at Buffalo, to make good the damage done by the collision; amount actually paid, $20. This was on the stern, above the water-line, inside and out.

Cash paid for reloading the vessel after repairs, at Detroit, $37 90.

180 In reloading vessel there was also the wages of two of my seamen, shipped at Detroit, and engaged on the work 5 days, at $2 25 and their board, $8. In all, for amount actually paid, $30 50.

Wages of one ordinary seaman, 7 days, at 14 shillings. This was while I was undergoing repairs, and reloading, $12 25; and provisions of same man being $5 25; in all, $17 50.

Wages of a boy who remained on the vessel all the time; 19 days, at $1 50, (his regular wages,) $28 50-100; and his board, $14 25-100; in all, $42 75.

Wages of the cook; 19 days, at $2 a day, $38; and his board at 75c. per day, or $5 a week, (don't remember which,) $14 25-100; in all, $52 25.

Mates wages; 19 days, at $2 50-100, (his regular wages,) $47 50-100, and his board being $14 25; total, $61 75.

My own wages, at $3 50-100 per day, (my regular salary), for 19 days, being $66-50-100; and my board for same time, at $1, $19; total, $85 50.

Lights, and glaziug the skylight, in repair of damage done by collision, and not included in carpenter's bill, amount paid, $3 40.

Extra towing from Detroit to Lake Erie; amount actually paid tug General M'Clellan, $20; my through tow bill was to be $60.

My vessel, at the time of collision, was in Saginaw trade, up freight going up and lumber freight coming down. My round trip,
181 not including detention here, occupied 19 days. I left Buffalo on August 15th, and received damages on September 2d; left Detroit September 20th, and arrived at Buffalo September 23rd; in all, 19 days running time. The total of my up and down freights on that trip was ($1,503 down, and $218 up,) $1,721.

The vessel was chartered for the down trip in Buffalo. On the preceeding trip she ran between the same ports, between July 21st and August 7th, occupying in all, 17 days, with the same kind of a down cargo. Her up freight on this trip was $231, and her down freight was $1,498; in all, $1,729.

On the succeeding trip she ran between the same ports with similar cargoes, between September 28th and October 16th, being 17 days. I had no up freight at that time. My down freight, a large load of lumber, with high freight, and under charter, amounted to $1,616 75.

I made two other trips from Buffalo to Toledo that fall.

I carried a crew of 8 men in summer, and a woman and nine men in fall.

The average running expenses, including wages, and provisions, during the three trips given, were: mates wages, $2 50 per day; 5 men, at $2 25 each, per day; 1 boy at $1 50-100 per day; cook, at $2 per day; my own wages, $3 50-100 per day; being $20 75 for wages a day. Provisions cost 75c. for 9 men each day; in all, for provisions, $6 75 per day.

Total per day, wages and provisions, $27 50.

Total for provisions and wages for a trip of 19 days being $522 50.

182 The vessel's stern that was broken in was a good, sound stern, only four years old.

There was no difficulty in procuring charters for my vessel during the summer and fall of 1864. I had plenty of work for her; more than I could do. I never proposed to lay up my vessel for repairs during the summer proceeding the collision; and never said I intended doing so. I did propose making repairs on her during last winter. I proposed renewing her top, giving her a deck frame, and new decks, cabin and forecastle. I considered she did not need a new stern, and did not propose giving her one. She had a new stern at Mills & Welch's, on August 31st, 1860. The proposed changes were to make her a grain vessel, and not repairs necessary to the vessel in her then trade. I would not have changed her stern had there not been a collision.

The yawl-boat that was broken was a good boat; just about as good a boat as the one I got in her place.

On cross-examination.

Have been owner and master of the Worth a little over two years, on January 9th, '65. She was built at Euclid, Ohio, in August or September '43. I have personal knowledge by the work in the vessel that she was repaired since then.

Question. Have you any personal knowledge that this vessel was ever rebuilt, or repaired, at any particular time and place,
183 and is not your direct testimony upon the subject of her repairs, previous to collision, derived from hearsay and from seeing some portions of the vessel apparently put in after she was built?

Answer. It is from hearsay; but from parties I can rely on. I saw her sunk in the river bed, at Cleveland, and was told she was afterwards taken up and rebuilt. So Captain Jno. Cotton, who formerly sailed her, told me. From all appearances, her plank shears, stancheons and rails, have been taken up and renewed throughout.

Question. When you testify that her stern was new, four years ago, do you not speak from hearsay?

Answer. No; speak from personally overhauling the ship-yard books, and from the statement and certificate of the foreman and proprietor of the yard.

Question. Was not her stern as much decayed as any other portion of the vessel.

Answer. No, I think not; because her sides have been well salted and taken care of and her stern has not. A vessel's stem and stern generally, deteriorate more rapidly than any other portion of her.

Question. After the repairs consequent upon the collision were made, did you not substancially rebuild the rest of the vessel?

Answer. Yes, I did.

Question. Is she not now substancially a new vessel?

Answer. Only in her upper works; I mean the top sides of the vessel; not her spars.

184 Question. Was not the value of your vessel increased to the amount of the repairs placed on her by Campbell & Owen?

Answer, Yes; a little, I think; to the amount of about $\frac{1}{4}$th to $\frac{1}{5}$th of the price of the new work; and then I might rule that off again for the inconvenience I have in my cabin; for I intended to have given her a different cabin entirely.

Question. You speak of the surveyor's report, in regard to the breaking of your hawser. What surveyor do you refer to?

Answer. Captain Wolverton.

Question. Why is the damage to a broken hawser any greater than the value of the time required to resplice it?

Answer. Because it depreciates the value of any rope to be broken and spliced again. I would not buy a new rope that had been broken and spliced, for half its value; besides, a rope, previous to its parting, is generally strained all over from end to end; as a general saying, "the guts are out of it," and it is worthless.

Question. Is not $115 more than half the value of a hawser?

Answer. I think $115 is an under valhation of the damage done to my three ropes.

Question. What were your gross expenses a day, at that season of the year?

Answer. I cannot exactly state without reference to my books, now on my vessel.

Question. Was it $100, or $75, or $50?

185 Answer. At a rough calculation I should say somewhere between $35 or $45 a day, say $40 a day. It was more on some trips than on others.

Question. Did you not say to Mr. Moore this morning that it was $45 a day?

Answer. Yes; I believe I did.

Question. What did Woolverton, the surveyer, estimate your repairs at?

Answer. I don't remember exactly the figures; but considerably below what it actually cost. The other man on the survey, Mr. Couls, was not, I think, conversant on the damages or the figures; Couls was Campbell & Owens' 1st foreman. Woolverton and Couls estimate was close on $1,500. I believe the vessel was then in dock; we did not know about her bottom; I have a copy of their survey and estimate; think my counsel has it.

(Copy of survey referred to to be produced subsequently and marked exhibit C.

Question. When you gave the dates and times that you gave this morning in regard to your trips, do you speak from entries in your books made by yourself; or from what do you speak?

Answer. I speak from memoranda of my tow-bills when I left for various parts; and when I paid these tow-bills, these memoranda were made at the time, or shortly after. Such has been my

186 practice for two seasons. I do now keep a debit and credit account with my vessel; I did not last year; I did the year before.

Question. Will you state, if you please, what your average net earnings per day were at that season of the year, during time of your detention with that vessel?

Answer. I can state what her net earnings might have been if she was not detained; and at this I must make a rough guess. I can only state roughly, from $55 to $65 a day, or thereabouts.

Question. You speak of a towing bill; explain about that.

Answer. The bargain was, that our vessel was to be towed through to Lake Erie, and she was only towed to Detroit. We paid the McClellan $20 from Detroit to Bar Point; had I gone through with the tug Eagle I should have paid $60 through instead of that; it cost me $65.

Question. Do you think that your testimony in this case is entirely unbiassed by your interest in it?

Answer. Yes; entirely so.

Question. Did you not contemplate rebuilding this vessel on your

next trip; and did you not stop at New Port to make a contract for that purpose, on this same trip down?

Answer. No; I did not. The tug stopped; I did not contemplate stopping; but as she stopped, I went to see McDole, a ship-builder, and to talk with him about building her over the next winter, but did not see him. My vessel's tonage, according to new measure-
ment, is 213 tons; according to old measurement, 257, and
187 over; her insurance grade is "B" 2.

I had to pay $316 75 for one year's insurance, including fire-risk, on a policy of $4,500. She was valued last year at $5,500. She cost me $4,500.

Re-direct examination.

The extent of my repairs on the vessel last winter, is pretty near $6,000, altogether. She is now valued at $10,000, and insured for $9,000. Her insurance grade is "B 1," and ought to go as high as "A 2."

WILLIAM T. FRASER.

Sworn and subscribed before me on, July 5th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

An adjourned examination on July 24, 1865.

Joseph B. Scott, a witness for the tug Eagle, being sworn, says: During the past summer I have been a ship-broker in Detroit. I am also an owner of vessels; have been in shipping business since 1850. I owned a vessel, the brig S. C. Walbridge, which, last season, was exclusively in the lumber trade. She carries from 160 to 165 M. of
lumber, has had on 174 M. She ran last season from Saginaw
188 to Buffalo, Saginaw to Ogdensburg, and to all the ports on lakes Eariе and Ontario from Saginaw. The average trip from Saginaw to Buffalo is from 16 to 24 days, the round trip. Sixteen days is the lowest time I know of. The Walbridge made nine trips during the season, from the early part of April to the last of November, or a few days into December. The Walbridge, on her nine trips during the season, cleared $809, or less than $100 a trip. In the Buffalo and Saginaw trade, we don't rely much on up-freights. Occasionally we get a little lot, but it don't pay much to bother with it.

Cross-examined.

The average time in June, July, and August, 1864, is from 16 to 24 days, with reference to my own vessel; don't know what other vessels have done. I keep a memorandum of the time my own vessels make, in their trips, and now speak from it.

J. B. SCOTT.

Sworn and subscribed before me on July 25th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

189 Oliver Droullard, a witness for said tug Eagle, being sworn, says: Am a mariner; been a mariner since 1831; a master marine since 1837. Was part owner of, and ran, the brig Ocean last season. She was then in the lumber and stave trade. She is about the same tonage and size, and carries about the same lumber cargo as the brig General Worth. During the season of 1864, she made nine trips. Some from Saginaw to Buffalo, some from Toledo to Buffalo, some from Georgian Bay to Cleveland. She did not clear on an average, over $200 the round trip. Some trips she would clear more, and on some she would clear nothing. The average number of days in a round trip, between Saginaw and Buffalo, is 18 to 22 days—averaging 20 days a trip, which, at $200 a trip, would enable the vessel to clear about $10 a day. I call that about what I would be willing to take for the services of such a vessel per day. A grain vessel, of course, would be worth more. Up-freights from lower lake ports to Saginaw don't amount to much. As a general thing we have to come up in ballast.

No cross-examination.

OLIVER DROULLARD.

Sworn and subscribed before me on July 25th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

190 *Cross-examination.*

By Mr. Russell:

Alexander McLeod, a witness for the libellant, being recalled, says: Don't know, except from hearsay, whether the vessel was rebuilt shortly after this. In case she was rebuilt immediately after, this new work would stand for rebuilding as far as it went. There would be no use of taking out this work in rebuilding her. Then, of course, the new work which we put on her saved an equal expense when her owner came to rebuild. We did no calking on her bottom except a little—out of water—up on her stern—up to her taffrail. Where the transoms were started below, of course it opened the seams. Don't think her bottom, under water, was damaged by the collision at all. She was perfectly tight. I heard no complaint of her leaking. My impression is that there was no occasion for taking her into dock at all. If I remember right, she was not taken into dock at all. I may be wrong, but such is my present recollection.

Re-direct examination.

She might have been docked at Campbell & Owens', but I do not remember it, or don't think she was. I was called off to Buffalo about 3 or four days before the work on her was finished, and
191 she was gone when I came back; so she might have been docked at Campbell & Owen's during my absence. The stern posts were started, and would have started her forward, which might have caused a necessity for docking her; but if so, it was not while I was there.

ALEXANDER McLEOD.

Sworn and subscribed before me on July 25th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

Michael B. Kean, a witness for the tug Eagle, being duly sworn, says: Have been in shipping business several years. Have known brig General Worth. She is a vessel 16 years old; 257 tons burden, and of the lowest class in the marine register, class "C" for vessels, and was so at the time of the collision. Immediately after this collision took place, being interested in it, I went up to examine the vessel at Campbell & Owens' ship-yard, and did examine her damages; and while there met Captain Fraser, and he and I examined the vessel together, and talked of the damage. In that conversation,
192 and at that time, and on board the vessel, Captain Fraser told me he had intended to rebuild the vessel immediately on his arrival at Buffalo, and had stopped at Newport, on his way down, to let out the job of re-building. He did re build her that fall, immediately after laying her up. She was rebuilt in Buffalo. In rebuilding her, the new work put on her in Buffalo was scarfed on to the work put on her in Detroit, such work being as good as any work could be, which was put on the vessel where it was. The old stern, before the collision, would not answer to be left in, and spliced on to in rebuilding, as it was rotten. While on the way down, the taffrail on her stern was ran into by another vessel, and broken, and the captain told me had settled the damages at $15 00. I examined the old transom very carefully, and it gave visible evidence of having been broken in some former collision, and the stern-post also gave similar evidence of having also been broken. The captain admitted to me, that those old breaks in the transom and stern-post were the results of an old break by a collision prior to the collision of the Frank Moore. The work done here by the collision was allowed, dollar for dollar, in the new work done at Buffalo. Captain
193 Fraser told me that the contractors so allowed it to him. The condition of the vessel, before collision, was that of a used-up and rotten vessel, unfit for anything but to carry lumber, or something that would not sink with her. I speak, on that subject, from personal examination, and knowledge, as an expert in the age and time that vessels will run, having built, repaired, and owned several vessels. I went all over the vessel after the collision, with Fraser, wherever I could go conveniently. There was a good deal of lumber on her deck. I saw the beams referred to by witness Couls, where the cabin was shoved forward by the collision. The cabin and the beams were rotten, as well as the stern of the vessel.

Cross-examined.

Have been sworn before, as to the damage of the vessel, and conversation with the captain. I reside in Detroit; am forty-two years old.

Re-direct examination.

I went to Buffalo on purpose te examine the new work, and did examine it; and while there conversed with Captain Fraser, and with the contractors, concerning it.

M. B. KEAN.

Sworn and subscribed before me on July 24th, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner eastern district of Michigan.

194 Endorsed: No. 811. District Court of the United States for the eastern district of Michigan. In Admiralty. William T. Fraser, owner of the brig General Worth, *vs.* The tug J. E. Eagle, her engine, &c., boats, libelled with the barge Franklin Moore. Commissioner's report as to amount of libellant's damages, taken under order of reference in said cause; amount of damages reported, $2,794 10. Received from Commissioner Wilkins, and filed on August 1st, 1865, in open court. Jno. Winder, clerk, by William D. Wilkins, deputy clerk.

195 FRASER
vs.
THE TUG EAGLE, KEAN, claimants. } In admiralty.

It is hereby ordered that the claimant have until the 1st Tuesday of September to file and enter a motion to set aside the decree and commissioner's report in this case and to refer the matter again to the commissioners, to take further proof, and for such further relief, as to rights, shall appertain, and as parties may deem theirselves entitled to.

And that said claimants have ten days from said 1st Tuesday of September, and which to enter and perfect their appeal in said case, and in case said motion is not heard and determined at that time that they have 10 days from the determination of said motion, in which to enter and perfect said appeal.

ROSS WILKINS, *U. S. District Judge.*

196 Endorsed: No. 811. In admiralty. Fraser *vs.* the tug Eagle. Order to extend time for motion and to take appeal. Filed in Clerk's office on August 14th, 1865. Wm. D. Wilkins, dep't clerk. Newberry & Pond, A. Russell, proctors for defendants.

197 *Motion.*

FRASER
vs.
THE TUG EAGLE. } In admiralty.

In the above case we hereby move the courts to set aside the decree and the commissioner's report in this case, and refer the matter to the commissioners to take such further proof as the parties may offer, and report the proof, with his opinion thereon, to this court for the reasons.

1st. That said report was filed prematurely and before the proof was all taken, and was a surprise upon this respondent and his counsel.

2d. Because the amount of damages is excessive, and is founded upon wrong principles, and is against the rights of evidence, which can easily be proven, if opportunity is given.

3d. That said action being founded upon contract no damages by way of demurrage can or ought to be allowed.

4th. Because no opportunity was given to said respondent to take exception to said report, as the decree was taken so soon after filing the report.

198 5th. And for other good and valid reasons this motion is based upon the files of said court and affidavits.

Sept. 5, 1865.

NEWBERRY & POND, *P'r for Resp.*

Endorsed: No. 811.—In admiralty. Fraser *vs.* tug Eagle. Motion filed and entered in open court Sept. 5th, 1865. Jno. Winder, clerk. Newberry & Pond, Pr.

199 In the District Court of the United States for the eastern district of Michigan.

FRASER
vs.
THE TUG EAGLE, M. B. KEAN, claimant. } In admiralty.

STATE OF MICHIGAN, *County of Wayne:*

Michael B. Kean, being duly sworn, doth depose and say that he is the owner of said tug Eagle and the respondent. That he has stated his case fully, and the facts connected therewith to his counsel, Messrs. A. Russell and John S. Newberry, and has by them been advised after said statement, and verily believes, that he has a good and valid defence to the whole of said pretended claim of said Fraser, and has been further advised and believes that the report of the amount due to said libellant made by the commissioner is very greatly in excess of the proper amount that should be allowed under the decree of the court.

And further says that the making and filing of said report, and the decree entered thereon, was a surprise upon this defend-

200 ant and upon his counsel, who was then managing the case.

And says that at the close of the taking of the last testimony, in said case said libellant caused said in substance that he wished to take the testimony of the men in Buffalo who did the work on said vessel; and this respondant replied that would suit him for he wanted their testimony in defence, as well as other testimony, and that he relied upon such statement, and did not suppose that the testimony would be closed until he had an opportunity to put in such proof as he might be advised was necessary, and that he is advised, and believes, that if an opportunity can be offered he can produce proof to materially modify and reduce said libellant's claim.

That the item for delay allowed by the commissioner was allowed upon the sole statement of said libellant, and is greatly in excess of the proper amount, even if anything should be allowed, what he believes he can show by proper proof if he has an opportunity offered; that he supposed said libellant had not closed his own proof, and that in justice and right he would have an opportunity to present his own proof after the libellant had closed his proof; that
201 his counsel, A. Russell, who managed the case, has been absent from the city for some time—nearly a month—and still is absent, and that if present he believes he would corroborate the above fully with more and fuller particulars of the same; that this application is not for delay, but that justice may be done.

M. B. KEAN.

Subscribed sworn and before me this 4th day of September, A. D. 1865.

WALTER ELLIOTT,
Notary Public, Wayne County, Michigan.

Title of cause above.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Alfred Russell maketh oath and saith: that at the time the last witness for the libellant was examined in the commissioner's office upon the reference. Mr. Moore, the proctor, being present, said that he was through with the exceptions of taking some evidence in Buffalo, naming what it was; that perhaps he should not want to take it, but most probably would, and would decide within a few days. Mr. Kean, claimant, being present, said that he was glad the libellant thought of taking the testimony he referred to in Buffalo; that he himself, Kean, wanted it, and would take it if libellant concluded
202 not to take it; that there was then some talk in regard to the mode and time of taking in Buffalo, and the parties departed; that deponent was much surprised a few days after to learn that a report had been made and confirmed that deponent had intended to take testimony.

Sworn and subscribed this 4th day of Oct., 1865.

ALFRED RUSSELL.

Endorsed: No. 811.—In admiralty. Fraser *vs.* the tug Eagle, M. B. Kean, claimant. Affidavits, Kean & Russell. Newberry & Pond. A. Russell, proctor.

203 District Court of the United States, eastern district of Michigan.

WILLIAM T. FRASER
vs.
TUG "J. E. EAGLE." } In admiralty.

EASTERN DISTRICT OF MICHIGAN, *ss:*

William A. Moore, of said district, being by me duly sworn,

deposes and says; that he is the proctor for libellant in said cause; that after the question of damages suffered by libellant in the above-entitled cause had been referred to W. D. Wilkins, esq., this deponent examined his witnesses from time to time as he could produce the same, and respondent's counsel appeared and cross-examined. The respondent also produced and examined on his behalf two witnesses; re-cross-examined one at least, and this deponent believes two of the witnesses sworn on behalf of libellant, and was then sworn himself in his own behalf.

That this deponent informed respondent, and his counsel, Mr. Russell, on the close of the re-cross-examination of Mr. McLeod, that libellant then did not expect to produce any more witnesses
204 unless he should examine a witness in Buffalo; that should this doponent conclude to do so, this deponent would advise respondent and his counsel, so that they might be present, should they deem it necessary, otherwise libellant had closed his proofs.

Deponent further says that the said Kean nor his counsel, Mr. Russell, nor any one on behalf of said Kean, ever said or intimated that they intended to produce other witnesses on behalf of respondent. That affidavit was read, the statement of the commissioner, W. D. Wilkins, esq., hereto attached, which deponent believes substantially correct.

Deponent further says that the said respondent has frequently said to said libellant in the presence of deponent, that he, respondent, should appeal the case under any circumstances of a decree now against him, and that he could and should defend the claim of libellant.

W. A. MOORE.

Subscribed and sworn to before me on this 10 day of October, 1865.

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

205 At the close of the evidence taken before the commissioner, on reference as to damages, Mr. Moore, for libellant, stated that perhaps he might desire to take additional testimony in Buffalo, relative to the amount and value of the repairs made on the Brig "Worth" at that place, and that if he did so he would give Captain Kean sufficient notice, in order that he might attend there, should he see fit, or might introduce rebutting evidence as to the Buffalo repairs. Some time elapsed after said statement of Moore—say three weeks or thereabouts—when the commissioner, intending at that time to make a trip to New York, notified Mr. Moore thereof, and desired his instructions relative to making up his report, stating that it should be done prior to his (the coming) departure. Mr. Moore then directed the commissioner to proceed and make up his report upon the testimony already adduced before him, which was done. Neither at the times above stated, nor at any subsequent time, did the commissioner have any intimation from the claimant, or from his attorneys, that the claimant desired to take any additional testimony, but on the

contrary the commissioner supposed, when he made his report, that the testimony, on behalf of the claimant on said matter of reference, was closed.

WILLIAM D. WILKINS,
U. S. Commissioner.

206 Endorsed: District Court U. S., eastern district of Michigan. —In admiralty. W. T. Fraser, libellant, *vs.* tug J. E. Eagle, *et al.* Affidavits of W. A. Moore, filed in open court Oct. 10th, 1865. William D. Wilkins, dept. clerk. W. A. Moore, libellant's proctor.

207 In the Circuit Court of the United States for the 7th circuit and eastern district of Michigan, on appeal.

WILLIAM T. FRASER, owner of the brig Gen'l Worth, libellant,
vs.
THE TUG J. E. EAGLE, her engine, boats, &c., Mich'l B. Kean, claimant.
} In Admiralty.

Whereas an appeal has been taken to this court from the District Court of the United States for the eastern district of Michigan, in the above-named suit, by said Michael B. Kean, claimant; and whereas said claimant has been ordered to give security in the sum of three thousand three hundred dollars, for the payment of all damages and costs on appeal in this cause; now, therefore, the stipulators undersigned hereby stipulate in the snm of three thousand three hundred dollars to pay all damages and costs which may be awarded against them on the appeal in this court in this cause.

M. B. KEAN.
H. G. BLANCHARD.

Taken, subscribed, and acknowledged this 14th day of October, A. D. 1855, before me—

WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

208 EASTERN DISTRICT OF MICHIGAN, *ss*:

Henry G. Blanchard, party to the within bond, being duly sworn, deposes and says that he is worth, in real estate and personal property, subject to execution, within said district, the sum of three thousand three hundred dollars.

H. G. BLANCHARD.

Sworn and subscribed before me, Oct. 13, 1865.
WILLIAM D. WILKINS,
U. S. Commissioner Eastern District of Michigan.

209 United States District Court, eastern district of Michigan.

WILLIAM T. FRASER, libellant,
vs.
THE TUG J. E. EAGLE, MICHAEL B. KEAN, claimant, and the barge Franklin Moore. } In admiralty.

And now comes Michael B. Kean, said complainant, and hereby enters his appeal to the Circuit Court for said district from the whole of the decree heretofore rendered against the said tug.

The appellant intends to make new proofs upon all the questions of fact raised upon the pleadings and on the reference in said cause.

MICHAEL B. KEAN.
By NEWBERRY & POND,
His Proctors.

I hereby fix the sum of $3,300 as the amount of security to be given by said appellant; and I do hereby approve the securities given.

Oct. 12, 1865.

ROSS WILKINS,
U. S. District Court.

210 Endorsed: No. 811. U. S. District Court, eastern district of Michigan, in admiralty. William T. Fraser, libellant, *vs* the tug J. E. Eagle, Michael B. Kean, claimant, and the barge Franklin Moore. Appeal bond in $3,300. Order of judge fixing am't of bond. Appeal of Michael B. Kean. Filed in clerk's office Oct. 12th, 1865. Wm. D. Wilkins, dept. clerk.

211 District Court of the United States for the eastern district of Michigan, *ss*:

I, John Winder, clerk of said court, do hereby certify the above and foregoing document and record to be the record on appeal in said court in the case of James T. Fraser, owner of brig General Worth, *vs*. the tug J. E. Eagle, Michael B. Kean, claimant and appellant, being the original papers, the depositions read on the hearing, and the commissioner's report, and all final and interlocutory orders of the court, and that the same is made up pursuant to rule 46 of said District Court regulating appeals.

Witness my hand and the seal of said court, at Detroit, on October 18th, 1865.

[SEAL.]

JOHN WINDER,
Clerk U. S. District Court.

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213 Circuit Court of the United States for the eastern district of Michigan, on appeal.

WILLIAM T. FRASER, libellant and appellee,
vs.
STEAM TUG J. E. EAGLE, M. B. KEAN, her owner, and barge Franklin Moore, respondent and appellant.
} In admiralty.

Deposition of Samuel S. McDonald, taken on the part of the respondent and appellant in said cause before Thomas S. Blackmar, a U. S. Commissioner for said district, and by consent of the parties to said cause to be used and read on the hearing thereof, subject to all legal objections.

J. S. Newberry, esq., appears for respondent and appellant, and L. T. Griffin, esq., for libellant and appellee.

The said Samuel S. McDonald, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, deposes and says:

I reside at Windsor, Canada West. I am a barrister-at-law, and have been practicing for the last sixteen years.

Ques. Is there any law in force in that part of Canada bor-
214 dering on the Detroit river or St. Clair river or lake that gives a lien upon a tug-boat for damages done to a vessel by the the wrongfully running her aground on the Canadian side of the boundary, while engaged in towing her through those waters?

Ans. There is none.

Ques. Is there any law in force there giving a lien on a tug for breach of contract of towage?

Ans. There is none.

Ques. Or for any tort committed by one vessel on another?

Ans. There is no lien in such a case. There is no Admiralty Court or jurisdiction in those waters. I am familiar with the laws relating to that part of the province of Canada called Upper Canada, where the waters are which are above referred to.

(Signed) S. S. McDONALD.

Subscribed and sworn to before me this 6th day of November, 1865.

(Signed)
THOMAS S. BLACKMAR,
U. S. Commissioner for the Eastern District of Michigan.

215 Circuit Court of the United States for the eastern district of Michigan.

In open court June 4th, A. D. 1867.

Present, Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

On appeal from the District Court of the U. S. for the eastern district of Michigan.

WILLIAM T. FRAZER, owner of the brig General Worth, libellant and appellee,
vs.
THE TUG JAMES E. EAGLE, her engine, boats, tackle, apparel and furniture, whereof Michael B. Kean is claimant and appellant.

This cause having been heretofore argued by counsel on either side and submitted to the court for decision, and the record of the court below having been inspected by this court, and mature deliberation being thereupon had, it is now therefore considered by this court that the judgment and decree of the said District Court of the United States be, and the same is now by the court here, affirmed. It is therefore also, now, by the court, here adjudged and decreed
that the said William T. Frazer, owner of brig General
216 Worth, do recover of and from the said Michael B. Kean, claimant of the tug James E. Eagle, her engine, boats, &c., &c., and Henry G. Blanchard, his surety on appeal, the sum of three thousand one hundred and fifty-two dollars, and sixty-seven cents, damages awarded in the court below to the said libellant, which said damages were caused by the negligence and improper conduct of the officers or crew of said tug, on September 2d, 1864, together with the further sum of one hundred and sixty-six dollars and eighty-six cents, for the costs and charges of the libellant in the court below, and also the costs and charges of the said libellant in this court to be taxed, and that said libellant have execution therefor. And hereupon, Mr. Newberry, on behalf of the appellant, gives notice of an appeal of this case to the Supreme Court of the United States.

(Signed) N. H. SWAYNE,
(Signed) ROSS WILKINS.

217 The Circuit Court of the United States for the eastern district of Michigan.

WILLIAM S. FRARER, owner of brig General Worth, appellee,
vs.
THE TUG JAMES E. EAGLE, HER ENGINE, &c., Michael B. Kean, claimant and appellant, impleaded with the Barge Franklin Moore.

To the Supreme Court of the United States:

The petition of appeal of Michael B. Kean, above-named appellant, respectfully shows, that on September 17th, 1864, said libellant exhibited his libel against the tug James E. Eagle and barge Franklin Moore in a cause of collision, civil and maratime, and claiming

damages against said tug and barge, and asking that they might be sold and condemned to pay said claim; that each of said vessels was duly bonded; that thereupon, such proceedings were had; that said cause was put at issue, testimony taken, trial and hearing had in the District Court.

That a decree was pronounced in the said District Court, dismissing the libel as to said barge, and in substance adjudging that
218 said libellant recover of and against said tug James E. Eagle, her tackle, &c., the sum of $2,794 10, and costs; that your petitioner duly appealed thereupon to the Circuit Court of the United States for the eastern district of Michigan, and said cause was removed thereby into said Circuit Court, and then tried anew, and such proceedings were had; that on the fourth day of June, 1867, the said Circuit Court made a final decree in said cause, affirming in all things said decree of the District Court, which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore, this appellant in open session of the said Circuit Court, and at the same term and session at which said decree of said Circuit Court was rendered, and made appeal from the whole of said decree of said Circuit Court to the Supreme Court of the United States, and respectfully prays that said decree of said Circuit, and the libel, answer, and pleadings, depositions, evidence, and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that Supreme Court will proceed to hear the cause anew, and that said decree of said Circuit Court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to said Supreme Court shall seem just.

(Signed) MICHAEL B. KEAN,
Claimant and Appellant.

(Signed) NEWBERRY & POND,
Proctors and Advocate for Appellant.

219 Circuit Court of the United States for the eastern district of Michigan.

In open court, June 7th, A. D. 1867.

Present, Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

On appeal from United States District Court.

WILLIAM T. FRAZER, owner of the brig General Worth, libellant and appellee,
vs.
THE TUG JAMES E. EAGLE, M. B. KEAN, claimant and appellant.

And now, on this day, in open session of the said Circuit Court, and at the same term and session thereof, at which the decree in this case was rendered, made and entered by said Circuit Court, the

said claimant and appellant, Michael B. Kean, his appeal having been heretofore duly allowed by the said Circuit Court, and W. H. Swayne, one of the associate justices of the Supreme Court of the United States, and judge of this court, comes and files his appeal in writing to the said Supreme Court, and at the same time lodges and files with the clerk of said Circuit Court a copy of said appeal
220 for the opposite party, and files his bond with sufficient sureties, in the sum of $5,000, as heretofore ordered, with sureties approved by the clerk of said court, and that said Bond is duly approved by said N. H. Swayne, who, at the same time, signs the citation to the opposite party as required by law, and said appeal is duly allowed and perfected.

221 Circuit Court of the United States for the eastern district of Michigan.

In open court, June 5th, A. D., 1867.

Present, Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

On appeal from U. S. District Court.

WILLIAM T. FRAZER, owner of the brig General Worth,
vs.
THE TUG J. E. EAGLE, M. B. KEAN, claimant.

On motion of Mr. Newbury, proctor for appellant, the appeal heretofore taken in this case is now, by the court here, allowed on filing of bond by appellant, in the sum of five thousand dollars, with suretys, to be approved of by the clerk of this court.

(Signed) N. H. SWAYNE.
(Signed) ROSS WILKINS.

222

223 In the Circuit Court of the United States for the eastern district of Michigan.

THE STEAM TUG JAMES E. EAGLE, HER TACKLE, &c., Michael B. Kean, claim't,
vs.
WILLIAM J. FRASER, owner of brig Gen'l Worth, libellant.

Know all men by these presents, that we, Michael B. Kean, principal, and Thomas Craig and Edmund Trowbridge, sureties, are held and firmly bound unto William S. Fraser in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said William S. Fraser, or to his certain attorney, heirs, executors, administrator, or assigns, to which payment, well and truly to be made, we bind ourselves and our heirs, executors,

and administrators, and each and every of them, firmly by these presents.

Sealed with our seals; dated the seventh day of June, one thousand eight hundred and sixty-seven.

The condition of this obligation is such, that whereas the above-named appellant, Michael B. Kean, has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the district of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States for the
224 eastern district of Michigan; now, therefore, if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then this obligation to be void, otherwise of force.

(Signed) M. B. KEAN.
" THOMAS CRAIG.
" E. TROWBRIDGE.

Sealed, delivered, taken, and acknowledged before me this 7th day of June, A. D. 1867.

(Signed) JNO. WINDER,
U. S. Commissioner for the Eastern District of Michigan.

UNITED STATES OF AMERICA,
Eastern District of Michigan :

On this seventh day of June, A. D. 1867, before me, personally appeared Thomas Craig, in said district, and made oath that he is worth the sum of five thousand dollars and over, after paying his just debts, in property, subject to execution within said district.

(Signed) THOMAS CRAIG.

Sworn to and subscribed before me this 7th of June, A. D. 1867.

(Signed) JNO. WINDER,
Clerk U. S. District Court for the Eastern District of Michigan.

I hereby approve of the within bond.

(Signed) N. H. SWAYNE.

225 UNITED STATES OF AMERICA, *ss:*

To William T. Fraser and Moore & Griffin, his proctors, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday of December next, pursuant to an appeal from a decree of the Circuit Court of the United States for the eastern district of Michigan, wherein Michael B. Kean, claimant of the steam tug James E. Eagle, is claimant and appellant, and you, the said William S. Fraser, is appellee, to show cause, if any, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the Honorable Noah H. Swayne, one of the justices of

the Supreme Court of the United States, this seventh day of June, in the year of our Lord eighteen hundred and sixty-seven.

N. H. SWAYNE,
Associate Justice of the Supreme Court of the U. S., and Judge of the Circuit Court of the U. S. for Eastern District of Michigan.

I hereby accept due service of the within citation.
Detroit, June 11th, 1867.

W. T. FRASER.
By W. A. MOORE, *his Att'y.*

EASTERN DIST. OF MICHIGAN, *ss:*

John S. Newberry, being duly sworn, doth depose and say: that said appellee, by his attorney, W. A. Moore, did, on the 11th day of June, A. D. 1867, duly accept service of the citation in this cause by his endorsement hereon, signed by said Moore, as attorney of said Fraser, and that said appeal was duly served on said Fraser, by leaving a copy of said appeal for said appellee in the clerk's office of the Circuit Court aforesaid, by this affiant, on the seventh day of June, A. D. 1867.

JOHN S. NEWBERRY.

Subscribed and sworn to this 23d day of Nov., 1867.

J. ELISHA WINDER,
U. S. Comm'r E. Dist. Mich.

Endorsed: No. 4,428. Circuit Court U. S. for the eastern district of Michigan. Frazer, owner of the brig Gen'l Worth *vs.* the tug James E. Eagle, M. B. Kean, claimant. Citation. Filed in open court June 12, 1867. Wm. D. Wilkins, clerk.

226 Circuit Court of the United States for the eastern district of Michigan.

I, William D. Wilkins, clerk of said court, do hereby certify that the above and foregoing is a true transcript of the record of the judgment or decree of said court, and of all the depositions and proceedings therein, in the case of William T. Frazer, owner of the brig Gen'l Worth, libellant, *vs.* the tug James E. Eagle, whereof Michael B. Kean is claimant and appellant, together with the citation deposited by the said appellant and filed in my office, together with the proof of service of the citation and the appeal; that I have compared the same with the originals on file, and find the same to be a true transcript thereof, and of the whole of such originals.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Circuit Court, at the city of Detroit, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL.] WM. D. WILKINS, *Clerk.*

[5-cent revenue stamp.]

IN ADMIRALTY.

SUPREME COURT

OF THE UNITED STATES.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

Steam Tug JAS. E. EAGLE,
M. B. KEAN, Claimant and Appellant, Impleaded with Barge F. MOORE,

vs.

WM. T. FRASER, Owner of Brig GEN. WORTH, Appellee.

Brief on Part of Tug "EAGLE," KEAN, Claimant.

JOHN S. NEWBERRY, Advocate.

DETROIT:
DAILY POST BOOK AND JOB PRINTING ESTABLISHMENT.
1869.

Supreme Court of the United States.

IN ADMIRALTY.

On Appeal from the Circuit Court of the United States for the Eastern District of Michigan, in Admiralty.

Steam Tug JAS. E. EAGLE,
M. B. KEAN, Claimant and Appellant, impleaded with Barge F. MOORE.

vs.

WM. T. FRASER, owner of Brig GEN. WORTH, Appellee.

Brief on Part of Tug "Eagle," Kean Claimant. *JOHN S. NEWBERRY, Advocate.*

This cause was commenced September 17, 1864, in the District Court of the United States, for the Eastern District of Michigan, by

WILLIAM T. FRASER, owner of Brig GEN. WORTH, against Tug JAS. E. EAGLE and Barge FRANK MOORE, "in a cause of collision," *not* in a "cause of contract."

Brief statement of facts proven.

Tug Eagle on the 4th of September, 1864, took Brig Gen. Worth and Barge F. Moore in tow in lower part of Lake Huron, o upper part of St. Clair River, to tow through St. Clair River, St. Clair Lake and Detroit River to Lake Erie, in the night time.

All of said waters are a part of the boundary between Canada and the United States.

Tug was properly manned, officered and equipped, and lighted. Barge F. Moore was not properly manned or officered, and at time of accident had

no officer, lookout, or even a seaman on her decks, but had only a boy at the wheel, at the extreme after part of the boat. The boy was not a seaman, but was only a cook.

The tow was proceeding down, with vessels in following order: first, Tug Eagle; second, Schooner Telegraph; third, Brig Gen. Worth; fourth, Barge F. Moore.

While passing from Lake St. Clair into the Detroit River, where the river is one-half or three-fourths of mile wide, the Worth sheered out of the line of the tow, and after dragging the bottom some little distance, fetched up on the shore of Peche Isle, and although the Barge F. Moore was hailed to steer clear, which she might easily have done, the boy at the helm paid no attention to the hail, and thus the Barge F. Moore negligently ran in and upon the Brig Gen. Worth, and crushed in her stern and caused her to fill with water.

No injury of any moment was done to the Worth by the grounding. It was all done by the negligence and carelessness of the Barge F. Moore in running into her.

Peche Island is a Canadian Island, and the accident happened in Canadian waters entirely.

The evidence shows that there is no law in force in Canada, either common, statute, or admiralty, whereby a lien is given upon any offending vessel or thing, for damages caused by breach of contract, or for a tort.

The answer, Record p. 5, denies fully that the libellant has any lien or claims against said tug, enforceable in this court. This denial raises every question of jurisdiction, and of non-liability, and denies expressly the existence of any lien.

The main points of law to be determined in this case, are as follows:

There is no law in force in Canada where this tort was committed, which gives a lien upon a vessel for the alleged damage.

The laws of the United States can have no extra territorial jurisdiction, nor force to create rights in a foreign territory.

As the Admiralty Lien is a "right in the thing"—*jus in Re*, not *jus ad Rem*—the lien must depend upon the law of the place where the alleged right occurred.

Before proceeding to this discussion, there are several introductory points to be established.

I. The action in this case is an action for a tort, not an action for a breach of contract of towage.

On the argument below counsel insisted that this action was "on a contract."

We insist that the action was for a *tort*, and it is important that this fact should not be lost sight of.

(*a*) Rule 23, in Admiralty, provides that the libel shall "state the "nature of the cause, for example of contract, of tort, of damage, etc., as "the case may be."

Page 2, of Record, states the libel to be "in a cause of collision, &c."

(*b*) Not only so, but the libel claims damages against the Tug Eagle and Barge F. Moore as joint *tort feasors.*

Of course it is absurd to insist that there was any *contract* between the Schooner Worth and Barge Moore, as both were being towed by same tug.

(*c*) The decree of the court follows expressly the libel and is rendered for "damages for a collision." See

Record, p. 67.

These three considerations determine conclusively that the action is for a *tort* and not on a *contract.*

(*d*) Driven from this point in the Circuit Court, counsel claimed, that if the court should hold the present action was *in tort*, then the court would allow him to amend his libel, so as to make the action for a breach of contract.

We reply: No case can be found where an amendment in admiralty was allowed, changing the whole form of action radically from tort to contract.

New counts and articles may be added, but they must be for similar causes of action, or of same class or nature. In WARE'S REP., p. 427, it is held that a cause of tort and contract cannot be joined.

If they cannot be joined, *a fortiori* an action cannot be changed,—I will not say amended—from one to the other.

15 Peters, 40. The Cargo of Schooner N. Carolina.

We claim this as full authority forbidding any such amendment as now claimed. See

3 Conk. ad. 264, 265.

Should such amendment be granted, then the action would be in *contract* against the tug, and in tort against the barge.

All the issues of the case would be changed. New issues would be raised. The rule of damages in cases of tort is very different from the rule in cases of breach of contract.

If the party has mistaken his remedy it is too late in the court of last resort to change his form of action. Such amendment would make this court one of *original* instead of *appellate* jurisdiction. See

15 Peters, 40. The Cargo of the Schooner N. Carolina.

Before proceeding further it is necessary to point out the nature of, and the distinguishing characteristics of an admiralty lien, such as the libellants seek to enforce here.

II. What is the nature of an Admiralty Lien.

A lien is the creature of law. Wherever a lien is claimed the party must establish its existence in the first instance.

4 Wheat., 438. Harmer vs. Bell.

Cited in 15 Law Report 555, Feb. 1853.

Chief Justice Jervis says, a maritime lien "is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process or a proceeding *in rem.*, relates back to the period when it first attached."

Judge Curtis, in the learned opinion to which I refer below, says: Its nature is not discussed in any elementary work.

He, therefore, after profound investigation, has clearly and most exactly defined and pointed out the nature and characteristics of the lien in admiralty, and when it arises.

2 Curtis, 404. The Young America.

After quoting the definitions of Pothier, Justinian, Emerigon and others, he says:

The Maritime Lien "Is an appropriation made by the law of a particu-"lar thing, as security for a debt or claim. The law creating an incum-"brance thereon, and vesting in the creditor what we term a 'special "property' in the thing, which subsists FROM THE MOMENT WHEN THE DEBT "OR CLAIM ARISES, and accompanies the thing even into the hands of a pur-"chaser."

Again, after discussing the subject on pages 410, 411, 412 and page 413, he says: "Maritime Liens subsist and bind property not in virtue of "the legal process to enforce them, but by operation of the law which "creates them, and fixes them on the property at the moment when the "debts are incurred."

In order, therefore, that an admiralty lien for a tort may be created, the law of the place where the tort is done, must be such as to create the lien.

If the law in force in Canada give no lien [see Point III], then the alleged lien of libellant fails. The foundation of his action is taken away.

19 How., 91. The Yankee Blade.

Where it is held that liens are *strictí juris* not to be extended by implication.

4 Wheat., 438. The Gen. Smith.

On a proceeding *in rem.* to enforce a lien, it is incumbent on the party to establish his lien in the first instance.

III. The Law in force in Canada, where this damage was done, where this alleged cause of action arose, gives no Lien or any action against the wrong doing vessel, or any right or Lien *in rem.*

S. S. McDonald, Record p. 88.

Who swears: He is a Barrister at Law residing in Canada, and has practiced sixteen years, familiar with the laws.

"There is no law in force in that part of Canada bordering on Detroit "River and Lake St. Clair (the *Locus in quo*), giving a lien for damages "done to a vessel by a tug wrongfully running her aground; or for breach "of contract of towage; or for any tort committed by one vessel on "another. There is no admiralty court or jurisdiction in those waters."

There is no counter evidence, and in fact the law was conceded to be as Mr. McDonald stated it.

The conclusive effect of this testimony upon an alleged lien in admiralty, will be shown hereafter. See Point VI.

IV. It is proven and conceded that the stranding and damage was done in Canada.

(*a*) The burden of proof is on the Libellant to show that the damage was done at *such place*, and under such circumstances as to create a lien. This he has not attempted.

(*b*) It was conceded in court below, and will not be denied here, that the damage and stranding took place in Canada.

We however collate a small portion of the testimony to prove the fact.

Record p. 3. Libel says: On reef just above Peche Island.

Record p. 10. Davidson. Collision well over towards Canada shore.

Record p 14. Collins. Collision on Canada side of channel. It happened on beach at head of Peche Island.

Record p. 16. Slattery. Collision took place on Canada side.

Record p. 82. Evans. Marks map and locates far over in Canada waters.

Record p. 35. Cottrell. Only 300 feet from dry land.

These witnesses establish the fact that the collision was in Canadian waters.

V. The Laws of the United States can have no extra-territorial operation.

This general principle in its application to all laws will not be disputed.

There is but one exception, and that is when admiralty courts enforce laws of the United States, either the statute, common, or civil law, in cases arising outside of the boundaries of the United States upon the "*high seas.*"

But laws are enforced in such cases, because they have arisen outside the bounds of any country, and therefore rights growing out of torts on the high seas are *communis juris*, and the courts of every nation that enforce rights given by the "Law of Nations," will take cognizance of them, and enforce them.

But such cases must be carefully distinguished from cases arising within the bounds of a particular foreign country, as the case at bar, which arose within the limits of Canada.

There are no waters on the boundaries between Canada and the United States, that are "high seas," particularly as the channel where this alleged cause of action arose, is only $\frac{3}{4}$ of a mile wide.

Record p. 61. Alex. Mann.

P. 47, WHIPPLE says: River at Peche Island as broad as Detroit River, (that is $\frac{1}{2}$ mile.) There can be no pretense that the narrow channel at Peche Island only $\frac{3}{4}$ or $\frac{1}{2}$ mile wide is "high seas."

This doctrine will be found fully discussed in the profound opinion of Judge Story, in

DeLovio vs. Bolt, 2 Gall.

The point seems to be clearly decided in

10 Ohio, 582, 587, St. Bt. Ohio vs. Stunt.

This was an action under the Boat and Vessel Law of Ohio.

Court held, not competent for legislature to impose a liability on persons or *property* out of jurisdiction of Ohio, and on account of transactions occurring *beyond* the *territorial* jurisdiction of the State.

I am not aware of any case holding contrary doctrine.

It follows, therefore, that no lien given by any law in force within the United States, either written or unwritten; statute law, or such laws as are announced, and interpreted by the courts of the United States, can have any extra territorial force or effect.

In other words, it is not competent for Congress, or courts of the United States, to make laws governing transactions in Canada, to give rights growing out of transactions happening in Canada, and then execute them, when the persons or property may be found in this country.

On the other hand, if the *right* is given by Canadian law, then our courts may enforce such right, otherwise not.

We conclude therefore, there was no lien or right of action *in rem* in favor of Libellants against the tug, created at the time of the accident. See

2 Curtis, 410. Young Mechanic, ***ubi supra.***

Can it be said that although no lien existed or was created at the time, yet that the lien was created, as soon as the vessel crossed into the jurisdiction of this court? or as soon as seized by process? By no means. The lien must, as said in

2 Curtis, 410.

"Subsist from the moment when the debt or claim arises, and accompanies "the thing," &c., and again, "Maritime liens bind property *not* in virtue of "legal process to enforce them, but by *operation* of the *law* which creates' "and fixes them on the property at the *moment* when the debts are incurred.'

If there is no such law in force, as we have proved there was not at the place, and at the moment the debt arises, then no lien can exist.

A contrary doctrine would lead to manifest absurdities.

Suppose the vessel does not come into our jurisdiction for a week, a year, ten years.

Suppose the wrong doing vessel is a Canadian vessel, will this court decide that a lien attaches to her whenever she crosses the line, for some

act done long before, innocent by the law of the place where done, but a lien if done on this side of the line.

Again if this court enforces liens against vessels for torts done in Canadian waters, for which the laws of Canada give no lien, will they also enforce liens for supplies, breach of contract of affreightment when Canadian Laws give no liens. In other words, will our courts enact the whole body of maritime laws for the province of Canada, contrary to their own system of laws, and then enforce them in our courts, whenever property or persons may cross into our country.

Again, if simple debts or claims personal in Canada, with no lien against the vessel, become admiralty liens when the vessel crosses the boundary line, then the lien is created, not by virtue of the original cause of action, but by reason of the vessel crossing the line. This seems very absurd.

The mere statement of such propositions would seem to carry their own refutation.

Yet such are the propositions the Libellent in this case is seeking to enforce as sound principles of law.

It follows therefore as a necessary corollary, that although the law of 1845, extending admiralty jurisdiction to the lakes, is broad enough in terms to cover cases arising in the Canadian portion of the waters of the lakes; yet no law of the United States can create any right or liability beyond the territorial jurisdiction of the United States, and within the body of a foreign country.

We have already shown that the lien in admiralty is a right, subsisting in the thing, and arising at the same moment the cause of action accrues. See

Point II.

We now proceed to show

VI. THAT THE RIGHTS OF THE PARTIES IN ALL CASES, ESPECIALLY IN ACTIONS FOR A TORT, MUST DEPEND UPON THE LAW OF THE PLACE WHERE THE ALLEGED RIGHTS ACCRUED.

In cases of contract it seems to be well settled that, if, by the *lex loci contractus*, a lien is given for the purchase money, the lien will be enforced in other countries, although by the *lex fori* no lien may be given in such case. [Story Conflict of Laws, § 322, note *b.*]

"And on the other hand when the lien or privilege does *not* exist in "the place of the contract it will not be allowed in another country, although "the local laws where the suit was brought would otherwise sustain it." [Story Conflict of Laws, § 322, *b* last part.

Whiston vs. Stoddard, 8 Martin, La. 95, 134, 135.

Goods were purchased in England by a citizen of Louisiana. No lien is given in such case for the purchase money in case of insolvency. In Louisiana a lien is given in such cases. On suit being brought in Louisiana to enforce a lien, the court held no lien could be enforced because it was not given by the law of England.

Story's Conflict of Laws is full of analogous cases; and having shown that the damage in the case at bar was done in Canada, whose laws in such

cases give no lien, it would seem from the principles laid down in those cases that the libel in this case being to enforce an alleged lien, that has no existence in the place where the cause of action arose, must be dismissed.

10 Ohio St. Rep., 582, 587. St. Bt. Ohio vs. Stunt.

The water craft law of Ohio gives a lien for injuries done by the crew, &c. In the case above a tort was committed while the boat was out of the waters of Ohio. Court held "not competent for a legislature to impose a "liability on person or property out of Ohio, on account of transactions oc- "curring beyond the territory of the State.

7 Mich., 161, 162, Tyler's Case.

In this case there was a profound discussion of the principle above involved. The court held "that an American ship in a foreign country or jurisdiction was subject to the laws of such country."

It follows as a necessary consequence, that the rights of the parties on account of transactions in such country must depend on the laws in force there.

Sprague's Ad. R., 402. Bark Havana.

The master of a British ship filed his libel in Massachusetts, to enforce a lien for his wages. The maritime law in force in this country gives no lien for master's wages.

Proven that by English law master did have a lien. Judge Sprague held, "That the lien so given could be enforced here, although by the law in force here there was no lien."

That decision in effect is, that the rights of parties and the question, whether or no there is a lien in a particular case, depends entirely upon the laws in force where the right of action accrued.

1 How., 28. Smith vs. Condry.

Two American vessels collided in port of Liverpool. Defence set up certain rights of parties under the law of the place of collision. This defence was sustained, and the court held:

"That when a collision occurs in an English port, the rights of the "parties depend on the law in force at that place."

This principle so clearly announced in this court would seem decisive of the point raised.

Our proof shows that there was no lien given in such cases by laws in force in Canada, where the alleged lien was created.

The authorities show that unless the lien is given by the law there in force, the courts of this country cannot enforce such alleged lien.

Recapitulation.

1. We have shown the action is for a tort, or as libel expresses it, in a "cause of collision," jointly against two vessels as joint tort feasors.

2. That an admiralty lien, such as is sought to be enforced in this case, is a right, *jus in re*, not *jus ad rem*, and must arise, if at all, at the

moment the claim arises, or debt is created. That liens are *stricti juris*, not to be extended by implication.

3. That the law in force in Canada gives no lien or right *in rem* against a vessel, whether the claim is founded in contract or tort.

4. It is proven and conceded that this alleged claim did arise in Canada.

5. The laws of the United States, whether written or unwritten laws, can have no extra-territorial operation.

6. The rights of the parties must depend upon the law in force at the place where the cause of action arose.

Our answer denied the allegation of the libel, as follows:

"And denies said Libellant has any liens on or against said tug, enforce-"able in this court."

Q. E. D. The LAW and the FACTS establish the proposition that

THERE WAS NO LIEN.

If the foregoing considerations are not enough to warrant the reversal of the decree below, we submit the further proposition.

VII. NEITHER THE BRIG GEN. WORTH, OR THE TUG EAGLE, OR BARGE F. MOORE, HAVE THE PROPER CHARACTERISTICS TO BRING THEM WITHIN THE ACT OF 1845, OR TO GIVE THE ADMIRALTY COURT JURISDICTION IN REGARD TO MATTERS OF CONTRACT OCCURRING ON THEM.

The act of 1845 provides that the district court of the United States shall have jurisdiction in matters of contract and tort, arising in upon or concerning steamboats and other vessels having the following characteristics.

1st. They must be "of 20 tons burden and upward."

2d. "Enrolled and licensed for the coasting trade."

3d. "At the time, (*i. e.* time the cause of action arose), employed in "the business of commerce and navigation between ports and places in dif-"ferent states and territories upon the lakes," etc., etc.

It has been held by this court that the act *limits* the jurisdiction to vessels having these *three* characteristics.

12 How 458, Gen. Chl f.
21 How. 245, Allen vs. Newberry.
21 How. 247, 249, McGuir vs. Card.
3 Wallace, 555, Hine vs. Trevor.

It remains to be shown that neither the libel nor the proofs bring the vessels, or either of them, within these requirements.

Record, p. 2, art. 1st and 2d of libel, alleges "that the Worth is enrolled and licensed," but does not add "for the coasting trade." There is no allegation that she is or was "*at the time*" employed in commerce and navigation, between ports and places in different states and territories, etc.

Record, p. 5, art. 1 of answer denies 1st allegation of libel.

Art. 2 and 3 of answers, denies the 2d allegation of answer, except it admits the tug was "enrolled and licensed," at the date of answer, but does not admit it was so enrolled and licensed for coasting trade, or employed "at the time," etc.

Every requirement therefore of the act of 1845, to confer jurisdiction is put in issue.

We have searched the record through and can find no proof of the facts.

1st. No proof that the Gen. Worth was enrolled and licensed "for the coasting trade," or enrolled at all at the time the cause of action arose.

There is proof that she was enrolled and licensed on the 12th of April, 1865, but no proof that she was even then enrolled, etc., for "coasting trade." It may have been for "fishing" or "whaling," or for the "foreign trade."

But proof of a proper enrollment, etc., on the 12th of April 1865, does not prove that she was enrolled "at the time" the cause of action arose, to wit, nearly a year before in September, 1864.

2d. There is no proof that the Tug Eagle was enrolled and licensed for "coasting trade."

3d. No proof that the Tug Eagle was employed in the business of commerce and navigation, between ports and places in different states and territories, etc., "at the time," etc., or indeed at any time. There is no proof on that subject.

These are affirmative facts which the Libellant has alleged, Respondent denied, and the burden of proof is on the Libellant to prove the alleged facts. The Libellant has failed to prove them; and on the other hand Respondent has shown that the Tug Eagle was a tow boat, towing from lower end of Lake Huron, to upper end of Lake Erie. Both of said termini are within the waters of the State of Michigan, and such employment did not require the Eagle to go into the waters of any other state than Michigan. She was clearly as to her occupation, within the case of

Allen vs. Newberry, 21 How, 245.

The necessary facts as required by the act of 1845, are neither alleged nor proven, and for this reason,

THE LIBEL SHOULD BE DISMISSED.

Again, there has a practice grown up in several of the district courts of the United States, of claiming a lien for towing, and for damages incurred while being towed, which, it would seem, cannot be sustained upon any authority. I therefore submit the following proposition as the correct doctrine.

VIII. THERE IS NO LIEN IN ADMIRALTY AGAINST THE VESSEL TOWED IN FAVOR OF THE TOWING VESSEL. NEITHER IS THERE ANY LIEN IN FAVOR OF THE VESSEL TOWED FOR DAMAGES SUFFERED FOR NEGLIGENT TOWING.

1. It will be noticed that the rules of the Supreme Court in admiralty provide for no such cases.

If the question of towage and reciprocal lien growing out of towing was settled when those rules were adopted, it would not have escaped the research of Judge Story, who is supposed to have drafted the rules.

2. The liabilities of tow boats were first decided to be those of common carriers, and so a reciprocal lien was held to exist. But that doctrine was exploded. It is now held that tow boats are not common carriers. See

1 Pars. Mar. Law, p. 176, Note.

where the cases are collected.

3. Towing as a salvage or quasi salvage service may be sustained, and the lien given for salvage, but not otherwise. See

Abb. Ad. 222. The H. B. Foster.

But the case at bar is not such a case.

4. If there are any cases, where the point has been raised, as to whether there is any reciprocal lien for service or damage between towing and towed vessels, and it has been decided to exist, it has escaped my research. It is possible there may be some cases, where the courts have given decrees, no one raising the question, but assuming the lien to exist.

Until authority is shown holding the lien to exist, I simply refer to the case of

4 Wheat. 438. The Gen. Smith.

Where it is held; that on a proceeding *in rem* to enforce a specific lien, it is incumbent on the party to establish the lien in the first instance.

Abbot, Ad. 222. The H. B. Foster.

In this case numerous cases of salvage by tow boats, or towing in the nature of salvage, are referred to. But in every one of them, where the lien was sustained, it was a case against a vessel in distress.

There are two discussions, one in 15 Law Rep., 552, and the other one in 16 Law Rep., p. 1, where the essayist in his text describes towage as a maritime service, giving a lien, but the cases he cites give no authority for his assertion. The very absence of authority would cast great doubt on the existence of a lien in such cases.

Repulse, 4 Notes of Cases, 170, 171. Dr. Lushington cites the case of the lien for dockage as dependent upon possession. If possession is given up, then the lien is given up, and there are twenty similar cases he says.

So the lien of common carriers by ship for their freight, depends entirely upon possession.

Lien of ship owner on cargo, for general average or loss by jettison, depends upon possession.

There is, therefore, in the nature of the towing service or growing out of it, nothing to give reciprocal liens, or any greater privilege or lien than in the cases above mentioned. If such liens can be sustained at all, which

we greatly question, it must be only to the extent above mentioned, depending upon retaining possession.

Without discussing the whole case upon the facts presented in the record; we claim with great confidence that there is one question of law that arises upon the facts, that would seem decisive of this case. The fact proven and admitted, is so conclusively held by this court as culpable negligence, that we deem it unnecessary to discuss any other.

IX. THE BARGE F. MOORE HAD NO LOOKOUT, MASTER, OR OTHER OFFICER ON DECK ATTENDING TO THE NAVIGATION OF THE BARGE, AND THE WHOLE DAMAGE WAS CAUSED SOLELY BY THAT NEGLIGENCE.

The facts were, the Tug Eagle was crossing Lake St. Clair, and entering Detroit River in the night, towing the following vessels: 1st.—Schooner Telegraph, 200 feet from tug; 2d.—brig Gen. Worth, 100 feet astern of Telegraph; 3d.—barge F. Moore, astern of brig Worth, with line about 16 fathoms, 96 feet. See Record, p. 10.

When entering the river, the tug and schooner Telegraph passed all right, but from some reason the brig Worth touched bottom, dragged along some distance (Record p. 10] and finally brought up.

No injury was done to her by the stranding. See **Record, p. 54, Kean.**

As soon as she commenced dragging the barge Moore was hailed to port. Record, p. 13, middle, also p. 16, bottom.

There was no lookout or officer on the barge forward, in fact, no one but a *boy*, 17 years old, who was *cook*, who had *sole charge* of the barge—*all the rest asleep.*

F. OWEN, Rec., 22, top. "I and Doherty were cooks, change about. "After Capt. turned in *I had sole charge of the barge.*" p. 19, bottom.

"I am 17 years old."

COLLINS, p. 14, bottom. "There was no one forward on the barge."

This testimony (and the fact is not disputed) shows this heavily laden lumber barge was solely under charge of a boy cook; no seaman, no officer, no lookout, no master on deck. The boy cook standing steering at the very stern of the boat.

I proceed to show by Libellant's testimony, that had there been a lookout, or officer to pass the orders even, the collision would not have happened.

SLATTERLY, wheelsman of Worth, Rec., p. 17, top:

"No one forward on barge when we hailed her. Heard no answer to "hail. Barge did not change her heading at all, and she hit us plumb "amidship. *If she had put her helm hard down when we hailed, she "would have passed us clear on the starboard side.*"

COLLINS, mate, Rec., p. 17, bottom: "If barge had obeyed order to "port when I hailed, she would have cleared us on starboard side."

These are the only two men who saw the accident. They are Libellant's witnesses. Had there been a lookout or officer forward, it is clear no damage would have been done."

FRASER, the Libellant himself, Rec., p. 27, middle, has to swear: "A boy of 17, part cook, part sailor, not competent to have charge of a vessel under such circumstances; it requires an officer and a man. Duty of vessels in tow to port, when order to port is given."

EVANS, Rec, 30, near top, to same effect, p. 30, near bottom. "A vessel could steer clear in 75 or 80 feet."

COTTRELL, expert, p. 36. "Good seamanship requires a lookout. A barge with a boy cook not sufficiently manned. If order obeyed, it is an *ordinary thing*, under the circumstances of this case, for barge to steer clear.

WHIPPLE, expert, master 25 years, p. 46. Lookout necessary, &c., &c., as above."

BOYNTON, sailed 17 years, p. 48. Same effect.

SWARTOUT, sailed 9 years, p. 51. Same effect.

KEAN, p. 55. *Gives actual experiment, proving barge could and would sheer clear.*

This testimony shows the fact that there was no lookout and no master on the deck of barge F. Moore. The experts say good seamanship requires a lookout and officer of the deck. Libellant's witnesses swear "if the barge had obeyed the order she would have gone clear."

We ask, therefore, that the rule of law laid down by this court and by all admiralty courts, holding the absence of a lookout positive inexcusable negligence on all classes of vessels, shall be followed.

We have here put our finger on the actual negligence, the outrageous carelessness, that caused the very damage in this case, and it is condemned alike by the Libellant's witnesses, who saw the whole transaction, and by experts, seamen of many years experience. And the law, as administered in this and all court, condemns the barge F. Moore. If any decree for damages is rendered, it should be against the said barge.

Abb. Ad., p. 335, Lookout by day necessary.

Blackford, S. H., p. 348. Ditto.

Ang., on Tide Waters, p. 114. Anchored vessel without watch on deck condemned.

1 W. Rob., 136. Vessels found in fault for having no watch by day.

6 McLean, 494, 495. Vessel at anchor condemned for having no watch on deck.

1 Cal., 459 To same effect.

6 Whart., 411. Same desision.

So far courts condemn vessels by day lying at anchor, *a fortiori*, vessels under weigh at night should be condemned.

The following cases have been decided in this court, holding vessels of all classes to blame for not having a lookout:

10 How., 585. St. John vs. Paine.
12 How., 463. Gen. Chief.
18 How., 225. St Bt. New York vs. Rae.
21 How., 570. (At antic) Ward vs. Chamberlain.
22 How., 470. N. Y. & Ba.t. Tr. Co.
23 How., 291
23 How. 448. Whittridge vs. Dill.

In view of the uninterrupted current of authority, it is only necessary to say: Courts treat the absence of either the proper officer of the deck or the lookout as an inexcusable negligence. I have never before heard of a case where *both* were off the deck of a vessel at the same time. If damage shall happen at such time, it would seem impossible to excuse the vessel, and if the evidence is positive that such negligence caused the damage complained of, the decree must be that the barge F. Moore, which was alone guilty, should be compelled to pay the damages.

If the court still is of opinion that the Libellant is entitled to the decree against the tug Eagle, we submit:

X. That the decree to be entered is simply to affirm the decree of the District Court. No interest should be allowed in this court.

Record, p. 64, shows judgment of district court founded on the Report of the commissioner to have been entered for $2,794.10.

The clerk of the circuit court in making up the judgment, calculated interest on the decree of the District Court.

The proper judgment to be entered in such cases as this, is simply to affirm the judgment of the district court but without interest, for the following reasons:

1st. No interest is claimed in the libel. Record, p. 2, 3.

2d. The action is founded on a tort, and the judgment sounds in damages.

3d. In no case until final judgment in actions for a tort is interest allowed, for the reason, interest is never allowed on unliquidated damages. See the cases cited in Sedgwick on damages.

4th The appeal in admiralty is a new trial, it is not like a writ of error; it vacates the judgment from which the appeal is taken, and it is a trial *de novo*, so that, as long as an appeal is pending, the damages are still unliquidated.

2 Conk. Ad., Ed. of 1857, p. 395.

It therefore follows that the damages are unliquidated damages, and as such not subject to interest, until after final decree in the appellate court, and not even then unless this court awards interest.

17 How. 17, 19, Udal vs. St. Bt. Ohio.
20 How. 258, Hemmenway vs. Fisher.
2 Wallace, 549, 550, The Aun Caroline.

From the considerations above presented, we ask that the decrees of the circuit and district court be reversed, and the libel dismissed with costs, and that it be referred to the clerk of the circuit court for the Eastern District of Michigan, to tax appellant's costs.

JOHN S. NEWBERRY,
Proctor for Appellant, the Tug Eagle.

Without knowing the points counsel for appellee may make in this court, I refer briefly to certain points made by counsel on the hearing below.

1. Counsel claimed that the contract for towage was made in American waters, *i. e.* to tow from Lake Huron to Lake Erie. That therefore this was an action for breach of contract of towage cognizable by the admiralty court, etc.

We reply. The action is for a tort as we have shown. See point I.

But, if we concede that this action is on a contract of towage between lower end of Lake Huron and upper end of Lake Erie, both termini being in the State of Michigan, then, as the contract is for conveyance of property entirely within the waters of the State of Michigan, it being a geographical fact, of which the court will take judicial notice, it falls within the letter and spirit of the case of ALLEN *vs.* NEWBERRY, 21 *How.* 245, and is fatal to libellant's case. The court would have no jurisdiction of such a contract.

2. Counsel claimed that the point involved was whether the admiralty court had jurisdiction in this case.

We reply. There is no question of jurisdiction raised in the case, as to the existence, or non-existence of the lien.

The point is simply, whether, under the facts of the case as shown in the record, the law gives a lien enforceable in the admiralty. We may deny the existence of a lien in a particular case and not deny the jurisdiction.

The law of 1845 quoted by counsel, gives the court admiralty jurisdiction on the lakes, but does not give a lien, or right of action in any case.

It gives the court jurisdiction over certain cases; but by no means gives liens, or attempts to give liens, where none existed before.

If by Canadian Law there were no liens given for torts happening in their waters, most certainly it cannot be claimed that the law of 1845 can by possibility be tortured into giving such liens. See points V and VI of brief. The law can not have any force in a foreign jurisdiction.

3. Counsel claimed that the waters on the lake are "high seas," and therefore the court had jurisdiction, &c., of cases arising anywhere on the lakes, &c.

We reply: This accident happened where the river was but one half, or three-fourths of a mile wide. The proper definition of "high seas" is "entirely outside of the boundaries of any country, and more than three leagues from any shore." There is no water between Canada and the United States that is not embraced in the boundaries of one or the other. See the treaties.

4. Counsel claimed that at common law the owners of the brig Worth would have a claim against the tug Eagle, for his damages.

This we deny. He might sue the owner of the tug Eagle at common law, and this he may doubtless do in admiralty, in the proper district; but he has no lien against the tug.

Counsel claimed that the case of Ward *vs.* Chamberlain, 21 How., 548, and Scott *vs.* Young America, 1 Newb., 100, are cases in point. Ward *vs.* Chamberlain, was in *in personam*, of course the court had jurisdiction, for no lien was sought to be enforced; but the question under discussion was not raised.

Scott *vs.* Young America, was simply on a motion.

It is enough to say the point made in this case was not raised or decided.

5. Counsel claimed that a "lien is one of the incidents of jurisdiction."

What he means, I am at a loss to determine. If he means that wherever the admiralty court has jurisdiction of a case a lien attaches, then he is mistaken. There are many cases where the court has jurisdiction, but there is no lien. Cutter *vs.* Rae, 7 How., 724, is a case of this kind.

12th Rule in admiralty provides for several classes of cases *in personam*.

14th Rule prescribes absolutely the suit must be *in personam*. There are many other cases where there is no lien, but court has jurisdiction.

6. Counsel conceded finally that the action was in form in tort, and not breach of contract, but claimed that he could amend in the Circuit Court, and I suppose will claim that he can amend here, if necessary.

The cases heretofore cited under Point I (*b*), settles this matter, but we refer also to

1 Brock., C. C., 122.
2 Par., Mar. Law., 715.
1 New., 205, 214.

These cases will show that the court will never allow a party to recast the whole libel or answer, or change the *form* of his action, even in the court where the action was instituted.

In the appellate court it will not be allowed for a much stronger reason, that is, it would be the institution of a new suit, and make the appellate court a court of original jurisdiction. See also fully to this point, 15 Peters, 40, heretofore cited.

A full answer to the whole suggestion of counsel is, that he has never made a motion to amend, and its *too late* now.

JOHN S. NEWBERRY,

Proctor for Tug Eagle, and Kean, her owner, Appellant.

Supreme Court of the United States.

No. 152.

THE TUG JAMES E. EAGLE,
MICHAEL B. KEAN,
CLAIMANT AND APPELLANT,

vs.

WILLIAM T. FRASER,
OWNER OF THE BRIG
GENERAL WORTH.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF
ON THE PART OF THE RESPONDENT.

GEORGE B. HIBBARD, for the Respondent,
BUFFALO, N. Y.

WARREN, JOHNSON & Co., Printers, 197 Main Street, Buffalo, N. Y.

Supreme Court of the United States.

THE TUG JAMES E. EAGLE, MICHAEL B. KEAN, Claimant and Appellant,
vs.
WILLIAM T. FRASER, Owner of the Brig General Worth.

Brief on the part of the Respondent.

GEORGE B. HIBBARD, *for the Respondent, Buffalo, N. Y.*

The position contended for in this Brief is this:

That the jurisdiction of the District Courts of the United States, as Admiralty Courts, in cases arising upon the Western Lakes and the navigable waters connecting them, exists under the Act of Congress of 1789; that those Courts have cognizance under that Act of "all causes of admiralty and maritime jurisdiction;" and, therefore, that in this case regarding it as arising in tort or contract, (and as such cases may be joined in one suit, *Borden vs. Harvey, Blatch. & How.*, 293, *The N. J. S. N. Co. vs. Merchants' Bank*, 6 *Howard*, 344, 434, if the District Courts have the jurisdiction claimed, it is immaterial which,) the District Court of the United States for the Eastern District of Michigan, had jurisdiction.

No question as to the jurisdiction of any of the Federal Courts can be more important. Having reference to the dicta of this Court, in the cases of *Waring vs. Clark, The Magnolia and Hine vs. Trevor*, for instance, few questions of such a nature could be more interesting.

FIRST.

Courts of Admiralty are Courts not only exercising jurisdiction expressly given by the power creating them, but Courts of the Law of Nations, so to speak, exercising powers not derivable from any one country. As such, (and the question is now considered irrespective of the peculiar character of the Admiralty Courts of the United States,) they have jurisdiction of causes of damage (including causes of collision) although the damage may have occurred upon the high seas, or beyond the sea. The District Courts of the United States (and each has the same jurisdiction as the others) are Courts of Admiralty, having all "admiralty and maritime jurisdiction;" and (unless prevented by positive enactment which, as will be shown, is not the case,) any District Court of the United States must have jurisdiction of maritime collisions wherever happening. Therefore, the United States District Court for the Eastern District of Michigan must have jurisdiction of this case.

I. Admiralty Courts are Courts of the Law of Nations, and a large part of their power, and in some cases their entire power, is derivable from such law.

The Huntress, *Davies*, 100.
Thompson vs. The Catharina, 1 *Pet. Ad. Decis.*, 104.
The Neptune, 3 *Hagg.*, 129, 140.

II. As such Courts, they have jurisdiction generally of all cases of maritime collision, for such cases are cases *juris gentium.*

The Yohann Frederick, 1 *W. Rob.*, 35.
The Bark Jupiter, 1 *Benedict*, 536.
The Ticonderoga, *Swabey*, 215, 217.
The Two Friends, 1 *C. Rob.*, 271.
The Jerusalem, 2 *Gallison*, 190.
The Volant, 1 *W. Rob.*, 437.
The Griefswald, *Swabey*, 43.

III. The District Courts of the United States are Courts of Admiralty, each with the same jurisdiction, and all have *all* "admiralty and maritime jurisdiction."

1. Such Courts exist beneath the judicial power granted by the Constitution, which provides that the judicial power of the Federal Courts shall extend to "all cases of admiralty and maritime jurisdiction."

Const. U. S., Art. 3, § 2.

2. The Act of 1789 gives to *all the District Courts* of the United States, "exclusive original cognizance of *all civil causes of admiralty and maritime jurisdiction.*"

1 *Stat. at L.*, 76.

3. All the District Courts possess the same powers, and "every District Court possesses *all* the powers of a Court of Admiralty."

The Sloop Betsey, 3 *Dallas*, 16.

IV. That this is such a cause of damage—a maritime collision—as an Admiralty Court, possessing all admiralty and maritime jurisdiction, must take jurisdiction of; and that, therefore, the U. S. District Court for the Eastern District of Michigan, which is such a Court, had jurisdiction of this case, (and if it had jurisdiction could enforce the lien claimed, for unless the lien existed, the jurisdiction would be but a barren power. See Point Fourth,) would seem, upon these very general, but indisputable views, an incontrovertible proposition.

SECOND.

The waters upon which this collision happened are such, in their general character, as to be the subject of "admiralty and maritime jurisdiction." If so, as the District Courts have jurisdiction of "all cases of admiralty and maritime jurisdiction," (and as this is such a case, if the waters upon which it happened were the subject of such jurisdiction,) the District Court, in this case, had jurisdiction of the cause.

I. The Western Lakes, and the navigable waters connecting them, are, in their very nature, and in consequence of the commerce carried on upon them, the subject of admiralty and maritime jurisdiction.

1. The navigation of these waters is not inland. They therefore are not inland waters. They are consequently in every legal aspect, seas,

Moore vs. The A. T. Co., 24 *Howard*, 1.

2. The Courts will take judicial notice of the geographical situation of these waters, that they are now in fact, through the Welland Canal, navigable from the ocean by vessels of large size; and of the nature of the commerce that is carried upon them.

The Appollon, 9 *Wheaton*, 362, 374.
The N. J. Nav. Co vs. Merch. Bank, 6 *Howard*, 344, 356.

3. Congress has established custom houses, and created ports for foreign trade upon them, and authorized such enrolment and license as permits vessels upon them to be employed in foreign commerce.

4 *Stat. at L.*, 487.

4. The navigation of these waters is at least common to two nations, and through the Welland Canal they are open to the commerce of the world. The ordinance of 1787 dedicated them to the commerce of the country and declares them "common highways, forever free" to the citizens of the sovereign States.

1 *Stat. at L.*, 52, *Note.*

5. The area of the Lakes is some 90,000 square miles, and their aggregate length is 1,500 miles.

Andrew Rep. Col. and Lake Trade, Senate, Aug. 26, 1852.

6. The amount and value of their trade exceeds that of the foreign commerce of the country.

Rep't Com. on Commerce, H. of R., 1856, *Vol.* 3, *No.* 316, *pp.* 9, 10, 11.

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Rep't Com. on Commerce, H. of R., 1856, *Vol.* 3, *No.* 316, *pp.* 9, 10, 11.

7. By most authoritative decision the general character of these waters has been so determined that it would seem altogether incontrovertible upon general principle, that this case is within the admiralty and maritime jurisdiction of this Court. They, in *legal* sense, may be said to be high seas.

Point Third, 5.

(*a.*) The locality of any maritime transaction as being within the body of any county, (even if these waters were in any county,) has long been immaterial.

Waring vs. Clark, 5 *Howard*, 441.

(*b.*) The rise and fall of the tide, as a test of admiralty jurisdiction, was destroyed by the decision in the case of

The Genesee Chief, 12 *Howard*, 443.

(*c.*) What then are these waters in legal aspect? Not inland, they are *extra fauces terræ.*

The Schooner Harriet, 1 *Story R.*, 251, 269.

(*d.*) In the language of Sir MATTHEW HALE, their larger bodies are waters where "a man may not discern from shore to shore."

The U. S. vs. Grush, 5 *Mason*, 290, 298.
De Port, Maris Ch., 4,

(*e.*) They are without the bounds of any county; and, within the ideas of Lord COKE himself, are beneath admiralty jurisdiction.

4 *Inst.*, 140.
2 *East. P. C., C.* 17, *Sec.* 10.
Comyn Dig. Admiralty, F. 1.
De Loviot vs. Boit, 2 *Gallison*, 398, 426, 427.

(*f.*) Prizes of war have been made upon them.

(*g.*) A commerce, not between sovereign States alone, but with countries foreign to the nation, is carried on upon them.

(*h.*) They are the counterparts, in commercial and legal feature, of such waters as the Baltic Sea. the Gulf of Finland and Bothnia, as forming one chain; of the Mediterranean, the Adriatic, the Sea of Marmora and the Black Sea, as forming another. Would not cases arising on those waters be cases of "admiralty and maritime jurisdiction?"

From communities which in the old time dwelt upon such waters, sprang the very principles of admiralty jurisdiction. Thence arose the Rhodian Law, the Consulate of the Sea, the Tables of Amalfi, the Laws of Wisbuy, of Oleron and the Hanse Towns. From such maritime business, and not from that which sought remoter seas, and out of the exigencies of commerce, in every legal and commercial aspect like that now existent upon the Western Lakes, arose the very body of Admiralty Law. Are not cases arising in such business upon the Western Lakes, more clearly, upon principle, cases of admiralty and maritime jurisdiction, of which Courts vested with all such jurisdiction must take cognizance, even than those arising in mid ocean where no law save the Law of Nations can be?

II. Excluding the immaterial consideration, the question as to whether a given locality is within or without the body of a county, and the immaterial test, the rise and fall of the tide, and as has been seen there is not a characteristic of the "high seas," the "main sea" of COKE, and HALE, and SELDEN, and

BLACKSTONE, not a feature which belonged to the waters upon which in immemorial time, the commerce was carried on, which, in its necessities, was the parent of admiralty law—not a peculiarity which has been recognized by jurist or publicist, as peculiar to places beneath admiralty jurisdiction, which does not belong to the Great Western Waters. If cases arising upon these waters are not within admiralty jurisdiction, and within the cognizance of a court possessing all such jurisdiction, what can be?

THIRD.

With reference to the peculiar character of the District Courts of the United States, as Admiralty Courts, and beneath the Constitution and the Act of 1789, the District of the Eastern District of Michigan had jurisdiction in this case.

I. It is not proposed here to attempt extensive disquisition as to the original character of the English Admiralty Courts, or to enter upon refined question as to the limitations put upon their power by the statutes of 13 Richard II, c. 5, and 15 Richard II, c. 3, or by action of the common law courts, excited thereto by Lord COKE. Before the statutes referred to, before the power of the common law courts was exerted to narrow the jurisdiction of the admiralty, the character of the English Admiralty Courts was like our own; and since the statutes of 3 and 4 Victoria, c. 65, and 24 Victoria, c. 10, giving jurisdiction "over any claim

for damage done by a ship," they are substantially the counterpart of our own.

The Alexander, 1 *W. Robinson*, 288, 294.
The Diana, 1 *Lushington*, 539, 540.
De Loviat vs. Boit, 2 *Gallison*, 398.
Point Third, 7.

II. It is enough to say that the jurisdiction of our courts has been determined by most authoritative decision to stand upon wider basis, than that of the English Courts of Admiralty, and that the limits of that jurisdiction are substantially to be sought for in the general maritime law of nations.

Waring vs. Clark, 5 *Howard*, 441.
Jackson vs. The Magnolia, 20 *How.*, 296.
The Genesee Chief, 12 *Howard*, 443.
The P. W. & B. R. Co. vs. The P. & H. and G. T. Co., 23 *Howard*, 209.
The Propeller Commerce, 1 *Black*, 574.

III. The jurisdiction of the District Courts exists beneath the Constitution and the Act of 1789, and irrespective of the Act of 1845, which should be considered a piece of legislation founded in a mistake in which, at the time of its enactment, this Court partook.

1. The Constitution declares that the power of the Federal Courts shall extend to "all cases of admiralty and maritime jurisdiction."

Const. U. S., Art. 3, § 2.

The Act of 1789 gives to *all* the District Courts "exclusive original cognizance of all civil causes of "admiralty and maritime jurisdiction, including all "seizures under laws of impost, navigation or trade "of the United States, where the seizures are made "on waters which are navigable from the sea by "vessels of ten or more tons burden, within their "respective districts, as well as upon the high seas."

1 *Stat. at L.*, 76.

2. Beyond all question the jurisdiction of each of the District Courts is the same as that of any of the others. This must be so under the language of the Act. It is so expressly decided.

The Betsey, 3 *Dallas*, 6, 16.

3. The meaning of the phrase in the Constitution, "all cases of admiralty and maritime jurisdiction" has been decisively held to be as wide in significance as such words could be, and to have no reference to the statute bound Admiralty Courts of Great Britain. The intent of the Act of 1789 was to confer upon the District Court all the original jurisdiction in such cases vested in the Federal Courts, and the language carries out that intent.*

*NOTE.—The criticism upon the section in 2 *Parsons on Shipping*, 168, and the query that the words "navigable from the sea" may have been intended to apply to the words conferring admiralty jurisdiction as well as to the clause respecting seizures, is without any foundation. To contend that the words had such application would be an attempt to prove far too much. No admiralty jurisdiction in such case would exist without a "seizure." No "seizure" takes place in actions *in personam;* and as no statute can be found save this conferring jurisdiction *in personam*, (unless it be the Act of 1845, which, of course, can only apply to lakes, etc.,) the District Court would have no jurisdiction in cases *in personam*, arising upon the ocean! An absurd conclusion. The *dicta* in the case of *The Magnolia*, 20 *Howard*, 296, 300, 305, of course, cannot be sustained. It is perfectly apparent, from the above considerations, that the words "navigable from the sea" only apply to "seizures under laws of

(*a.*) The case of *Waring vs. Clark*, 5 *Howard*, 441, since recognized in so many cases, settled the doctrine that beneath this act, the jurisdiction of the District Courts, depended on the character of the locality as determined by the commerce there carried on, and was not affected by the fact that it might be within the body of a county.

(*b.*) The case of *The Genesee Chief*, 12 *Howard*, 443, (in accordance with an opinion which Chief Justice MARSHALL said was one of the most deliberate of his life, *Van Santvoord's Lives of the Chief Justices*, 444,) determined the character of the Western Lakes, and that they were, from that character, the subject of admiralty jurisdiction, and excluded forever from view, in this country, the ancient English test of admiralty jurisdiction, the rise and fall of the tide.

(*c.*) Excluding these now immaterial tests, and giving to the Western Lakes, the character, which, in principle and in fact, they should have, and which has thus been given them, and beyond all question they come beneath the phrase of the Constitution,

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impost," etc. But regarding these *dicta* in another view, they cannot be sustained. The lakes, as a matter of fact, of which this Court will take notice, are navigable from the sea by means of the Welland Canal. (*Point Second, I*, 2.) The natural obstacle of the Falls of Niagara has been overcome by artificial means. The removal of such natural obstacle, in rendering such waters public, (Sir MATTHEW HALE, *De Port. Maris*, *c.* 3,) makes them, in every sense, navigable from the sea. Suppose, by removal of some bar, a river was rendered navigable from the sea above a point which no vessel had before passed, could not *seizure* be made above the removed bar? Would not such admiralty jurisdiction as is recognized in such cases as *Waring vs. Clark*, 5 *Howard*, 441, and *The Commerce*, 1 *Black*, 347, extend above the point where before the removal of the obstruction such jurisdiction did not extend? If the removal of a natural obstacle in one case would extend the jurisdiction upon the rivers, would not a similar removal extend it to the lakes? Nor is there anything peculiar to an artificial water which would prevent admiralty jurisdiction from extending over it. Would there be any doubt about its extending to a case of collision arising in the Suez Canal (*The Young America*, 1 *Newberry*, 101,) or in an artificial enlargement of a harbor in a seaboard port?

and cases of maritime tort upon them must be cases coming within the language "all cases of admiralty and maritime jurisdiction," of which the District Courts must take cognizance. This general consideration must show, and this the case of *The Genesee Chief* conclusively holds. It holds the act of 1845 constitutional, not beneath the power of Congress to regulate commerce, etc., but because the waters of the Lake from their character, were fully within the scope of the admiralty and maritime jurisdiction referred to in the Constitution. "It pitched the power," (to employ the language of Mr. WEBSTER—*The N. J. S. Nav. Co. vs. Merchants' Bank*, 6 *Howard*, 344, 378—language in substantial prediction as to the ultimate decision of this Court) on its right location. "Its proper home was in the admiralty "and maritime grant; as, in all reason and in the "common sense of all mankind out of England, "admiralty and maritime jurisdiction ought to "extend, and does extend to all navigable waters, "fresh or salt."

Unquestionably the act of 1789 used the phraseology of the Constitution in the same meaning, and therefore that act gave *all* such original admiralty jurisdiction, as, beneath the Constitution existed, to the District Courts.

The case of *Hine vs. Trevor*, 4 *Wallace*, 455, holds that the grant of admiralty powers by the act of 1789 is "coextensive with the Constitution as to the character of the waters over which it extends," and approves and affirms the case of *The Genesee Chief*.

Before the act of 1845, (if it be restrictive,) beyond all question, admiralty jurisdiction under the doctrine of these cases existed over the Lakes.

Can it be contended that Congress meant to

decrease that jurisdiction, by an act professedly extending it?

(*d.*) It follows that as the locality is the sole question in cases of maritime tort, and as the enrollment and license of the vessels have nothing to do with the question—*The Commerce*, 1 *Black*, 547, *The Sarah*, 1 *Lushington*, 549—the District Court must have had jurisdiction in this case in any view in which it is regarded.

4. Other general considerations show that the act of 1789 must give jurisdiction to the District Courts upon the Western Lakes.

(*a.*) If they are "navigable from the sea," it cannot be said (excluding once more from view the immaterial question whether the locality was within the body of a county, and the immaterial test of tide or no tide) that cases upon them were not within the meaning of the act of 1789.

They are all navigable from the sea as a matter of fact of which the Court will take judicial notice.

Point Second, I, 2.

Beyond question Lake Ontario is navigable from the sea, and admiralty jurisdiction under the act of 1789 would undoubtedly apply there. Could any reason in consistence, let us say with the cases of *Waring vs. Clark* and *The Genesee Chief*, be given why admiralty jurisdiction should be held to exist over Lake Ontario but not upon Lake Erie, or Lake Michigan? If not so navigable, whence comes the jurisdiction of the District Court in cases of infraction of the Revenue laws in cases arising on the Lakes? No act save the act of 1789 gives such jurisdiction, and that only gives it in

such cases, where the seizures are made in waters "navigable from the sea." Such cases are cases of admiralty and maritime jurisdiction

U. S. vs. La Vengeance, 3 *Dallas*, 297, 301.
U. S. vs. The Betsey, 4 *Cranch*, 443.
Clark vs. The U. S., 2 *Wash. C. C. R.*, 519.
The Black Hawk, *Conkling's Treat.*, (*4th Ed.*) 512, *Note.*
1 *Kent's Com.*, 375.

(*b.*) Prizes, says Chief Justice TANEY, in the case of *The Genesee Chief*, have been made upon the Western Lakes. How, it may well be asked, if the act of 1845, as has been inconsiderately said in later cases, is restrictive in its character?

Prize, all questions of prize or no prize, are certainly questions *exclusively* of admiralty and maritime jurisdiction.

Jennings vs. Carsons' Exrs., 1 *Pet. Ad. Decis.*, 1, 10.
The Betsey, 3 *Dallas*, 6, 16.
Penhallow vs. Doane, 3 *Dallas*, 54, 97.
Maisonnaire vs. Keating, 2 *Gallison*, 325.

(*c.*) Nor, if the Act of 1845 be restrictive, could the Admiralty Courts have jurisdiction of cases of salvage arising upon the Western lakes. Certainly they could have no such jurisdiction unless the cases arose "in, upon, or concerning" vessels "enrolled and licensed for the coasting trade." Equally, certainly, could they not have jurisdiction of *any* case of salvage, for the Act of 1845 applies only to cases of "tort and contract," and salvage is neither in tort or contract. Nor would a prize case (or, strictly, a case arising for infraction of a revenue law) be a case arising in a "matter of contract or tort."

(d.) Nor, if the Act of 1845 be restrictive, could the Admiralty Courts take a jurisdiction of cases of general average, which do not arise out of tort or contract.

1 *Story's Eq. Juris.*, § 490.
Columbian Ins. Co. vs. Ashby, 13 *Peters*, 331, 340.

And general average is the undoubted subject of admiralty jurisdiction.

Pike vs. The St. Josephs, 6 *McLean*, 573.
Dupont de Nemours vs. Vance, 19 *Howard*, 162.

It follows that if admiralty jurisdiction does not exist over the lakes by virtue of the Act of 1789, prize cannot be made there, for no other Act gives the power, (the other Acts of the kind relate to privateers, etc.,) and no Court would have power to condemn as prize captures on the lakes. Such power must extend to the lakes, and if admiralty jurisdiction extends there for one purpose it must for all. If the Act of 1845 be restrictive, it would *restrict* the jurisdiction of the Courts, to use its own language, to cases in "matters of contract and tort, "arising in, upon, or concerning steamboats and "other vessels of twenty tons burden and upwards "enrolled and licensed for the coasting trade and "employed in the business of commerce and navi-"gation, between ports and places in divers States "and Territories upon the lakes and the navigable "waters connecting the same." Vessels, the subject of capture, would not be so enrolled or employed.

If the Act of 1845 be restrictive, equally would it affirmatively prevent jurisdiction in many revenue cases, and certainly give impunity to infractions of revenue law, etc., by foreign vessels, which certainly

would not be "enrolled or licensed for the coasting trade" of this country.

With equal certainty would jurisdiction in cases of salvage and general average be prohibited. But the Act of 1845 plainly is not restrictive for other reasons.

Point Third, V.

IV. Considering the character of the great Western waters as they now must be regarded, and there can be no doubt about the jurisdiction upon closer view.

1. Their general character has been in some measure already considered, settled as it is beneath comprehensive view of that character, by statutory recognition and by express adjudication.

Point Second.

2. It has been already seen, that whether a given locality be within the body of a county, and whether the tide there rises and falls, are immaterial questions.

Point Second, I, 7.

3. Such waters are, in the stricter view under which they are now to be considered, in legal effect, high seas. The exclusion of the immaterial tests referred to substantially makes them so. The highways of commerce, even in the most restricted legal sense, as to sovereign States, and as to a province substantially an independent country, and practically open to all foreign trade, they must be so regarded.

Point Second.

Findlay vs. The William, 1 *Peters' Ad. Decis.*, 29, (*note.*)
Thompson vs. The Catharina, *Id.*, 110.
Johnson vs. Falconer, 2 *Pa.*, 639.
The Eclipse and The Saxonia, 31 *L. J.*, (*Ad.*,) 201.
Johnson vs. 21 *Bales, etc.*, 2 *Paine*, 601, 619.

4. The jurisdiction of the American Courts of Admiralty, (and even the jurisdiction of the English Admiralty,) in cases arising upon the high seas, cannot be disputed, and the same reasons must establish the jurisdiction over waters legally the same. The Act of 1845 confirms that jurisdiction.

Burke vs. Trevitt, 1 *Mason*, 96.
Chamberlain vs. Chandler, 2 *Mason*, 242.
Munro vs. Almeida, 10 *Wheaton*, 473, 486.
The Sarah, 1 *Lushington*, 549.

V. Upon closer view than any heretofore taken the Act of 1845 is not restrictive, and, if not restrictive, of course the Act of 1789 as it applies to all District Courts, must apply and give jurisdiction in the full meaning of its terms, to the District Court of the Eastern District of Michigan.

1. It is not restrictive by its very language, for it is an Act "*extending* the jurisdiction," etc.

5 *Stat. at L.*, 726.

2. To hold it restrictive would, as has been seen, deprive *all courts* of any jurisdiction in cases of prize, or for infraction of any revenue law, arising upon the lakes. It would deprive the Courts of

Admiralty of jurisdiction in cases of salvage and general average there arising.

Point Third, III, 4.

3. To hold it restrictive would lead to the most absurd conclusions. Admiralty jurisdiction under the Act of 1789, and from the character of our Admiralty Courts, and of the business carried on upon our rivers, has been held to extend to cases there arising within a county and where no tide rises and falls, and irrespective of the question of enrollment, license or employment of the vessel over which it is exercised.

Waring vs. Clark, 5 *Howard*, 441.
The Genesee Chief, 12 *Howard*, 443.
The Commerce, 1 *Black*, 547.
The Sarah, 1 *Lushington*, 549.

4. Is it to be conceived that Congress, in an Act professedly to extend the jurisdiction of the Admiralty Courts, intended to limit such jurisdiction, and prevent its application to a commerce far more important in every respect, far more international in its character, than such as is carried on upon our rivers, to which admiralty jurisdiction has been held beyond the power of present dispute to apply?

Point Second.

Can it possibly have been the intent of Congress, while it gave admiralty jurisdiction over the rivers of the county, to deny it as to waters not inland?

Moore vs. Am. Trans. Co., 24 *How.*, 1,

to waters upon which so extensive and peculiar trade is carried on, as to give this country national features belonging to no other Kingdom or Empire,

Point Second,

to waters, from their very character, the subject of admiralty jurisdiction?

The Genesee Chief, 12 *Howard*, 443.

What consistency can there be in such doctrine?

6. The jurisdiction of the District Courts as to cases arising upon the lakes has been held in many well reasoned opinions to depend upon the Act of 1789, and not upon the Act of 1845, and that therefore that Act is not restrictive.

Franconet vs. The Backus, 1 *Newberry*, 1.
The Young America, 1 *Id.*, 101.
Parmlee vs. The Meirs, 1 *Id.*, 197.
The Great Western, 4 *West. L. Monthly*, 281.
Wolverton vs. Lacy, 8 *Law Rep.*, (*N. S.*) 672.

7. The dicta of this Court from which it may be argued that the Act of 1845 is restrictive in its operation, (as for instance the dicta in *Hine vs. Trevor*, 4 *Wallace*, 555,) occur in cases where the point was not up, and are not authoritative. The reason and substance of the fundamental decisions upon which the modern doctrine as to the extent of the admiralty jurisdiction in this country rests, are opposed to the ideas thus announced.

8. What, then, should be the conclusion as to the Act of 1845, especially when taken in connection with the doctrine of the Court as to jurisdiction in cases arising on contract?

The Belfast, 7 *Wallace*, 624.

Can it be any other than that it was a piece of unnecessary legislation? Nor is this to do violence to any rule of construction. This Court partook in the very mistake which led to its enactment. Before the case of *Waring vs. Clark*, such a statute might have been deemed necessary to extend the jurisdiction to the Western Lakes. The principles of that decision, developed as they were in the case of the *Genesee Chief*, would have made the Act unnecessary. *Waring vs. Clark* was not decided until 1847. It well may be assumed that Congress mistook the law when the general doctrine of this Court was based in the same mistake.

To decide that the Act of 1845 was unnecessary or founded in mistake, or not restrictive, and but confirmatory of what existed before, will be to give harmony to the system of the jurisdiction of our Admiralty Courts. To hold that it is restrictive will be to establish a doctrine irrational, incongruous, and, as has been seen, of most absurd consequence, especially with reference to prize and revenue cases, and cases of salvage and general average, and to cases, the parallel in every legal and commercial feature, of those arising upon the great rivers of the country.

IV. The English Admiralty Courts, under modern statutes, have jurisdiction substantially like our own. They, and our own Courts, beneath express decision, now have jurisdiction in such cases, even if they arise within the dominion of a foreign power.

The Peerless, 1 *Lushington*, 30, 40, 41.
The Diana, *Id.*, 539, 540.
The Griefswald, *Swabey*, 430, 435.
The Ticonderoga, *Swabey*, 215, 217.

The Halley, 2 *Privy Council Appeals*, (*Eng. Law R.*,) 193.
Thomas vs. Lane, 2 *Sumner*, 1.
De Loviot vs. Boit, 2 *Gallison*.
Point Third, *IV*, 4.

1. The jurisdiction in such cases does not depend on any local law.

Point Second, *II*.

2. To what extreme would the recognition of any opposite doctrine lead? Even our laws with reference to preventing collision—the laws defining signal lights, etc., would be applicable or not applicable, upon the one side or the other of that mid-lake line, which navigators of those waters might, for very safety, be required accurately to ascertain, in the very height of midnight storm.

VII. The large, the enlightened, the only practical doctrine of this Court, since it stepped without the restrictions of its earlier decisions, since it took the continental and not the insular view of the subject, has been to determine questions of admiralty jurisdiction upon consideration of the business in which the cases arise. That doctrine has received most express recognition in the very late cases of *The Commerce*, 1 *Black*, 547, *The Belfast*, 7 *Wallace*, 555, and is recognized all through the leading cases in this Court on such subjects. In cases of contract, was the contract as to maritime business? In cases of tort, did the tort occur in maritime business? The character of the business determines the maritime character of the water upon which it is conducted. If the business be

such as in the cases of *Waring vs. Clark*, *The Commerce*, *The Belfast*, *The Genesee Chief*, admiralty jurisdiction extends over it, and all the District Courts must exercise that jurisdiction. "The true test of admiralty jurisdiction," says Justice Story in an early case, "is "whether the vessel be engaged substantially in mari-"time navigation or in interior navigation and trade, "not on tide waters."

The Steamboat Orleans, 11 *Peters*, 175, 183.
Peroux vs. Howard, 7 *Peters*, 324.

The true test now, and since all question as to tide waters has become immaterial, is whether the vessel be engaged in such navigation as is held to be beneath admiralty jurisdiction, in such cases as the four last alluded to. "Since the case of *The Genesee Chief*," says Mr. Justice NELSON, "navigable waters may be substituted for tide waters."

The Plymouth, 3 *Wallace*, 20, 34.

And in *The Magnolia*, 20 *Howard*, 296, 301, Mr. Justice GRIER scouts the idea that the Western lakes are not "navigable." To settle such to be the whole doctrine, in whole application to the business of the country, will be to give consistency to the whole doctrine, and provide infallible test as to the jurisdiction in cases claimed to be of admiralty cognizance in this country.

1 *Curtis' Com. on Juris., etc., Courts U. S.*, § 46.

FOURTH.

That admiralty jurisdiction in the District Court existed in this case, it is claimed is established. If such jurisdiction existed, then a lien existed. The one is the necessary concomitant of the other.

I. Jurisdiction in such a case would be but a barren power unless a lien existed through which that jurisdiction could be made efficient. As jurisdiction exists, the existence of a lien necessarily follows.

1. The lien exists from the very nature of the case—*Point Second, II*—and exists in precisely such a case.

The Night Watch, 1 *Lushington*, 542.
The Ship John Fraser, 21 *Howard*, 184, 194.
Sturgis vs. Boyer, 24 *Howard*, 110.
The Express, 1 *Blatchford*, 365.
The Hector, 4 *Blatchford*, 199.

2. The lien may be said to be inchoate at the time of the collision, existent at the place where the tort takes place, enforceable when the offending *res* comes within the jurisdiction of a Court exercising the powers of a Court of Admiralty.

Flanders on Sh., § 152.
The Bold Buccleugh, 7 *Moore*, 284.
The Rock Island Bridge, 6 *Wallace*, 213.

3. The idea that the lien must exist by virtue of some local law, so to speak, is fallacious.

No admiralty lien is given by any express law of any State or Nation in such cases. The lien is created and exists beneath the body of the Admiralty Law, existent wherever admiralty jurisdiction extends.

Point Second, II.

To oppose this idea would be to contend that no lien exists in many cases where it undoubtedly does.

What gives the lien in cases of collision taking place in mid ocean, where no law of any country exists?

Point Third, IV, 4.

What gives the lien in cases of collision above referred to, the collisions happening, some of them, in the very heart of countries foreign to the Courts enforcing them?

Point Third, VI.

What gives the lien in cases of bottomry where the contract has been made in a foreign country, or in cases of salvage accruing upon a barbarous coast?

The Jerusalem, 2 *Gallison*, 190.
The Two Friends, 1 *C. Rob.*, 271.
The Sloop Mary, 1 *Paine*, 671.
The Draco, 2 *Sumner*, 157.

That a lien exists in case of the breach of a maritime contract, (in the case of the *Belfast*, 7 *Wallace*, 555, for instance,) no one questions.

The lien arises the moment the breach of the contract occurs. Would it be contended that a lien

would not arise in such a case if the breach occurred even in a Canadian port?

Considering this as a case in contract, there could be no doubt as to the lien.

4. But it is abundantly held that the lien exists and can be enforced wherever the property is found within the jurisdiction of an Admiralty Court.

The Bee, *Ware*, 332.
The Commerce, 1 *Black*, 574, 580.
The Slavers, 2 *Wallace*, 383, 403.
The U. S. vs. The Betsey, 4 *Cranch*, 443, 451.
The Merino, 10 *Wheaton*, 391, 402.
Point Fourth, 2.

Nor is there a case, or an authority, which recognizes the idea that the admiralty remedy *in rem* depends upon the place of the origin of the cause. Remedies *in personam* and remedies *in rem*, exist according to the nature of the cases. But to hold that a remedy would exist as to something happening in one locality which would not, if the same thing happened in another, and yet to concede that admiralty jurisdiction existed in both places, would be an anomaly in maritime jurisprudence. This consideration shows that the question of jurisdiction and the question of lien are identical.

5. Nor is the idea tenable that the lien in any such case depends upon the law of any country.

That a right added by special law in a locality beneath admiralty jurisdiction will be recognized in Admiralty Courts sitting elsewhere cannot be doubted.

That local regulation or law may in some in-

stances enter into the merits of a case and determine a decision upon the merits, is beyond question.

Smith vs. Condry, 1 *Howard*, 28.

That case, however, has been most seriously doubted.

The Halley, 2 *Privy Counsel Appeals*, (*Eng. Law R.*,) 193, 204.

6. To hold that the mere absence of local law upon a water beneath admiralty jurisdiction would prevent the existence of the only thing through which such jurisdiction could be effective—would be to deprive the Admiralty Courts of a jurisdiction and power they have exercised through all time of their existence. No Court enforces foreign law as such. Courts sometimes, and almost always, recognize and enforce rights existent beneath foreign law.

Admiralty Courts enforce rights and apply remedies existent beneath admiralty law.

"The general maritime law was adopted by the "Constitution. * * * Where the Constitution "adopts the admiralty and maritime jurisdiction, it adopts also the law by which it is governed."

Roberts vs. Skofield, 8 *Am. Law Reg.*, 156.

Among the oldest of rights and remedies recognized and enforced by Admiralty Courts, is the right and remedy *in rem*, in cases of maritime tort.

GEORGE B. HIBBARD,
For Respondent,
Buffalo, N. Y.

Supreme Court of the United States.

No. 152.

THE TUG "JAMES E. EAGLE,"
MICHAEL B. KEAN
Claimant and Appellant,
vs
WM. T. FRASER,
Owner of the Brig. "Gen. Worth."

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

Brief of W. A. Moore,

COUNSEL FOR APPELLEE.

The libel was filed in this cause by Fraser, the owner of the brig "General Worth", for damages done to the brig while in tow of said tug; the damages claimed being about $2,800.

CONCEDED FACTS.

On the morning of September 1st, 1864, the master of the tug, at the southern end of Lake Huron, about two miles from the northern end of St. Clair River, and in American waters, entered into a contract with the libellant to tow the brig "General Worth" with the tug "James E. Eagle," both American vessels, and enrolled and licensed for the coasting trade, from where they then were to Lake Erie, about ninety (90) miles distant, for the sum of sixty dollars.

In accordance with said agreement the said brig was taken in tow, together with the schooner "Telegraph" and the barge "Franklin Moore," the "Telegraph" being next to the tug, and attached by a line about two hundred and fifty (250) feet long. The "General Worth" was attached to the "Telegraph" by a line about one hundred and seventy-five (175) feet long, and the barge "Franklin Moore" was still astern and attached to the "General Worth" by a line only about eighty (80) feet long, and made short *by the direction of the master of the tug*, in order that she might be managed the more easily.

The tug, with the tow, passed on through St. Clair River, across Lake St. Clair, and was passing into Detroit River, when she got too far to the eastward, or to the port hand of a channel about one mile in width, and ran across Peche Isand reefe.

The tug did not touch bottom; the "Telegraph" touched but passed over; the brig touched and grounded, and while aground the barge came on and ran into the stern of the brig, doing the damage sought to be recovered for by the libel.

The grounding and collision occurred about 2 A. M. of September 2d, 1864. The night was a good night for seeing; was starlight, and without fog, mist or haze.

The defense claimed that the barge might have avoided the stern of the brig if she had been properly manned, and denied any fault on the part of the tug, her officers and crew, by reason whereof the collision and damage accrued, and denied that libellant had made such a case as entitled him to enforce any claim for damages in said court.

Neither in the pleadings nor proofs in the District Court was the question of jurisdiction raised or presented to the court, nor were the pleadings amended by the respondent on appeal.

The District Court decided in favor of libellant and against the tug for the sum of about $2,800 and costs of suit.

After the appeal was taken, some testimony as to the laws of Canada was taken by respondent tending to show that there was no Court of Admiralty existing in Canada, nor any statutory action *in rem* whereby any lien would arise for the damages set forth in the libel.

Peche Island reefe extends northerly from Peche Island, situated in the northerly end of Detroit River, and although about in the middle of the river, is on the Canadian side of the boundary line as extended through the centre of the chain of lakes and rivers forming the north-western boundary of the United States.

On hearing on appeal in the Circuit Court the claimant and appellant abandoned his appeal on the merits and based his defense upon want of jurisdiction in the court, because the collision occurred on the Canadian side of the boundary line. The decision of the District Court was affirmed in the Circuit, and respondent appeals to this court.

I.

Libellant's claim was well founded and was enforceable in the District Court.

1st. The High Court of Admiralty has always exercised jurisdiction over causes of collision of vessels upon the high seas.

Abbot on Shipping, 234.
Story on Bailment, §607.
1 Wm. Robinson 387.
1 Conk. Ad. p 20.
Peyroux vs. Howard, 7 Peters 324.
"Orleans" vs. Phœbus, 11 Peters, 175.
"The Thomas Jefferson," 10 Wheaton 428

2d. The District Court has the same jurisdiction in matters of contract and tort arising in or upon or concerning vessels of twenty tons burden and upwards enrolled and licensed for the coasting trade and at the time employed in the business of commerce and navigation between ports and places in different States and Territories upon the North-western lakes and the navigable waters connecting said lakes, as was theretofore possessed and exercised in cases of like vessels employed in navigation and commerce upon the high seas.

"The Genessee Chief, 12 Howard 451
The Hine vs. Trevor, 4 Wallace 569.

3d. In the case of The People vs. Tyler, 7 Mich., cited by counsel for respondent, Judge Campbell at page 209 says: "Upon the high seas every vessel is, for jurisdictional purposes, a part of the territory of the nation of its owners, and an offense committed on board such vessel is an offense against the sovereignty of that nation.

See also the "Apollon," 9 Wheaton 362.
Reg vs Azzopardi, 2 Moody 366.

4th. Respondent's counsel says the admiralty jurisdiction as asserted in the case of Scott vs. "Young America," 1 Newbery 101, and in Ward vs. Chamberlin, 21 How. 548, both cases being for collision, one in the Welland Canal, and one near the Canada shore of Lake Erie, is not denied, but says that in the absence of a law of Canada creating a lien no lien is given; in other words, although this court may exercise admiralty jurisdiction over American vessels at the localities named, yet the liens and liabilities, the incidents and benefits of that jurisdiction can be of any avail only upon the American side of the boundary line.

5th. The maritime law binds the mariner, having gone on board a vessel to perform his contract wherever the vessel may go, and he has a lien for his services to the last plank of the vessel, which can be enforced anywhere. The same law gives the owners of the vessel a lien for the freight of a cargo put on board, and also holds the vessel liable for the fulfillment of a contract to transport such cargo wherever such cargo is to be delivered.

II.

1st. The owners of the tug made a contract to tow safely and securely the brig from Lake Huron to Lake Erie, and the brig was taken in tow pursuant to such contract.

(Vide Libel, p. 2, folio 6 of record; also p. 25, folio 66.)

2d. The facts of this case furnish all the essentials of a *Maritime Contract.* It was made in the United States, and by

citizens of the United States, it was made upon and concerning American vessels, of the burthens, enrollment and employment required by the law, and was to be executed on waters common to the United States and Great Britain, and the subject matter and the place of execution constitute it clearly a maritime contract.

3d. The law gives a lien upon the vessel for damages for the non-performance of the contract.

The owners of the tug have a lien on the brig for the towage services, when performed, and the owners of the brig have a lien upon the tug for damages for the non-performance of the towage services. When once commenced, the obligation is mutually and reciprocally binding upon the vessels, the same as between vessel and cargo. It is of no consequence *when* or *where*, in the execution of the contract, it is violated.

If the tug fails to tow through the vessel, or to deliver the freight at the place named in the contract, a lien arises on the failure, which can be enforced in a Court of Admiralty jurisdiction whenever the failing vessel comes within the jurisdiction of the Court. A cargo may be lost while an enrolled vessel lies in the port of a foreign country, but that would in no manner relieve the vessel from a lien for the cargo lost, if lost by the fault of the master and crew of the vessel, when she comes within the jurisdiction of this Court.

4th. The limitation sought to be given to the Admiralty jurisdiction by the construction of claimant's counsel would involve the whole subject in inextricable confusion, and would, in fact, render the Admiralty jurisdiction of but little benefit. In the Tyler case, 7 Mich., 162, cited by counsel with such apparent confidence, the Court held that the act of Congress of February 25th, 1845, extending jurisdiction over the Lakes, was *unconstitutional*, a decision which will have no weight against the decision in the case of the "Genesee Chief," 12 Howard, before cited and affirmed in "Hine" vs. Trevor.

5th. But it is claimed that libellant's cause of action is collision, and therefore he cannot claim under contract. It is true the cause of action is stated to be collision, and the damage was done by a vessel astern, but by fault of tug, but, as before stated, the libel in the third allegation sets up a contract to safely and securely tow the brig, and alleges the breach on the part of respondent.

We do not conceive that amendment is necessary, but if it should be necessary, this court will permit such amendment as will do justice in the case.

24 Rule in Admiralty.
2 Par Maritime Law.
Dupont vs. Vance, 19 Howard. 162.

RECAPITULATION.

This Court has jurisdiction, and will enforce the lien against the tug.

1st. The High Court of Admiralty exercises similar jurisdiction and enforced similar liens and claims arising on the high seas prior to the act of 1845.

2d. By the act of 1845 the jurisdiction of this court was extended to matters of both *contract and tort arising in, upon or concerning vessels of the burthen, enrollment and employment of the vessel in this case.*

3d. That although the jurisdiction of this court as to torts depends somewhat upon locality, yet as to contracts it depends upon the persons, the subject matter, and the nature of the contract, and this contract contains all the elements of a maritime contract.

4th. The defense on the merits being abandoned and the jurisdiction being established, we submit that the decree of the District Circuit Courts should be affirmed with costs.

(Signed) WM. A. MOORE,

For Appellee.